Supreme Court, U.S.
FILED
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(4)

No. 06-

IN THE

Supreme Court of the United States

STACY A. GIBSON,

Petitioner,

v.

ADA COUNTY, *et al*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

PETITION FOR WRIT OF CERTIORARI

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Vernon K. Smith
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Boise, Idaho 83702
(208) 345-1125
Attorney for Petitioner

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IN THE UNITED STATES DISTRICT COURT FOR THE STATE OF IDAHO

Case No. CV 04-288-S-BLW

MEMORANDUM DECISION AND ORDER

Filed: June 12, 2006

Document No. 65

DAWN C. KNICKERBOCKER, VIRGINIA L. ATCHLEY, and TAMMY L. BATCH, individually and on behalf of those similarly situated,

Plaintiff,

vs.

ADA COUNTY, IDAHO,

Defendant.

Appendix 58

INTRODUCTION

The Court has before it plaintiffs' motion for final certification. The Court heard oral argument on May 26, 2006, and took the motion under advisement. For the reasons expressed below, the Court will grant final certification of a collective action under the Fair Labor Standards Act (FLSA) but deny the request for a class action under Rule 23 for the state law claims.

ANALYSIS

In an earlier decision, the Court conditionally certified this case as a collective action under the FLSA. Plaintiffs sent out notices and 16 prospective plaintiffs opted into the suit. Plaintiffs now seek final certification.

Plaintiffs seek to certify a class of Jail Technicians employed by Defendant at the Ada County Sheriff's Office at any time between June 8, 2001, and June 8, 2004, and classified by the defendant as exempt under § 7(K) of the FLSA.

Section 216(b) of the FLSA requires plaintiffs to show that prospective plaintiffs are "similarly situated." For plaintiffs to be similarly situated, there must be a factual nexus that binds them together as victims of an alleged policy or practice. *Ballaris v. Wacker Silttronic Corp.*, 2001 WL 1335809 (D.Or. August 24, 2001). In addition, the Court may consider whether the various defenses available to the defendant may be individual to each plaintiff, making it difficult for defendant to present a full range of defenses. *Pfohl v. Farmers Ins. Group*, 2004 WL 554834 at *2 (C.D.Cal. 2004). Finally, the Court should consider fairness and procedural factors. *Id.*

Here, the factual nexus is that prior to April of 2004, the defendant treated the class of Jail Technicians as exempt under § 7(k) of the FLSA. The defendant Ada County may have individualized defenses but the size of the group is not so large that presentation of these defenses would be prejudiced in any way. Finally, the fairness factor weighs in plaintiffs' favor given the basic similarity of their claims and the greater efficiency of resolving them in a single action rather than in individually-filed actions. For these reasons, the Court will certify this action as a collective action under the FLSA.

The Court turns next to whether the plaintiffs are entitled to Rule 23 class certification for their state law claims. The Court rejects this claim because plaintiffs have not demonstrated to the Court how a Rule 23 class for the state law claims would provide relief that is not already provided by the FLSA collective action.

Ada County requests the Court to go further and dismiss the state law claims. However, there is no motion to dismiss before the Court, and until the matter is properly presented, the Court will not rule.

ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to certify class for final certification under 29 U.S.C. § 216(b) (Docket No. 48) is GRANTED IN PART AND DENIED IN PART. It is granted to the extent it seeks final certification under the FLSA, 29 U.S.C. § 216(b), for a collective action including as plaintiffs Jail Technicians

employed by defendant at the Ada County Sheriff's Office at any time between June 8, 2001, and June 8, 2004, and classified by the defendant as exempt under § 7(K) of the FLSA. It is denied in all other respects, specifically with respect to the request for a Rule 23 class certification of state law claims.

DATED: June 12, 2006

s/ B. Lynn Winmill
B. LYNN WINMILL
Chief Judge
United States District Court

APPENDIX 59 – AFFIDAVIT OF PLAINTIFF'S COUNSEL, DANIEL E. WILLIAMS (DOCUMENT NO. 21-1), FILED FEBRUARY 11, 2005, IN *KNICKERBOCKER, ET AL. V. ADA COUNTY, IDAHO*, CASE NO. CV O4-288-S-BLW, US. DISTRICT COURT, DISTRICT OF IDAHO, ATTESTING TO THE VALIDITY OF THE DOCUMENTS ATTACHED THERETO

IN THE UNITED STATES DISTRICT COURT FOR THE STATE OF IDAHO

Case No. CV 04-288-S-BLW

AFFIDAVIT OF DANIEL E. WILLIAMS

Filed: February 11, 2005

Document No. 21-1

DAWN C. KNICKERBOCKER, VIRGINIA L. ATCHLEY, and TAMMY L. BATCH, individually and on behalf of those similarly situated,

Plaintiff,

vs.

ADA COUNTY, IDAHO,

Defendant.

Appendix 59

STATE OF IDAHO)
)ss.
County of Ada)

DANIEL E. WILLIAMS deposes and says as follows:

1. I am one of the counsel of record for Plaintiffs in this matter and have personal knowledge of the facts and matters set forth herein.

2. Attached hereto as the designated exhibits are true and correct copies of the following documents:

"A" Rule 30(b)(6) Deposition of Ada County, Testimony Of Randy Folwell of February 3, 2005;

"B" Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant

"C" Defendant's Responses to Plaintiff's First Set of Requests for Admission.

3. Pursuant to Rule 23(a) and Rule 23(g), I submit that William H. Thomas and I, along with other attorneys and staff at Huntley Park, LLP, are competent to prosecute this action of behalf of the prospective class. Specifically, we have performed the work necessary in identifying and investigating potential claims in this action, as set forth in Plaintiff's Second Amended Complaint.

Appendix 59

4. Our firm generally and William H. Thomas and I individually are experienced in handling class actions and complex litigation and we are knowledgeable regarding applicable law. Mr. Thomas and I have competently handled several class action cases, including but not limited to the following federal cases in the District of Idaho: Bristwo, et al., v. Fleetwood Enterprises, Inc., Case No. 00-0082; Bogan, et al., v. Fleetwood, Enterprises, Inc., Case No. 00-0440; Munoz, et al., v. Fleetwood Enterprises, In., Case No. 02-224; Moon, et al., v. Quest Communications International, Inc., Smith v. Micron Electronics, Inc., Case No., 02-579, as well as other complex litigation.

5. Counsel will commit the necessary resources to represent the class.

6. Counsel do not have conflicts of interest with class members nor does there exist any other reason why counsel should not serve as class counsel.

7. Defendant's counsel has indicated that, if a three-year period was used to compensate Jail Technicians, an additional thirty-one (31) more class members would be eligible for compensation.

S/ Daniel E. Williams

Subscribed and sworn to before me this 11th day of February, 2005.

S/ Glenys McPherson
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 11/7/06

APPENDIX 60 – EXCERPT TAKEN FROM ADA COUNTY'S RESPONSE TO INTERROGATORY NO. 3 (DOCUMENT NO. 21-5, P. 2), VERIFIED BY GARY RANEY, NEWLY ELECTED SHERIFF, FILED FEBRUARY 11, 2005 IN *KNICKERBOCKER, ET AL. V. ADA COUNTY, IDAHO*, CV 04-288-S-BLW

INTERROGATORY NO. 3: Please identify when the Ada County Sheriff's Office or any one acting on behalf of the Ada County Sheriff's Office first classified the position of jail technician as exempt under 29 U.S.C. § 207(k).

ANSWER: Objection. Defendant objects to this interrogatory on grounds that it seeks information protected by the attorney-client and attorney work product privileges. Notwithstanding the objection and without waiving the objection, Defendant believes that jail technicians were classified as exempt under 29 U.S.C. § 207(k) sometime between 1993 to 1995.

APPENDIX 61 – EXCERPT TAKEN FROM ADA COUNTY'S RESPONSE TO INTERROGATORY NO. 9 (DOCUMENT NO. 21-5, P. 4-5), VERIFIED BY GARY RANEY, NEWLY ELECTED SHERIFF, FILED FEBRUARY 11, 2005 IN *KNICKERBOCKER, ET AL. V. ADA COUNTY, IDAHO*, CV 04-288-S-BLW

INTERROGATORY NO. 9: Please identify all persons who participated in any way in the decision "to compensate these law enforcement personnel as if they had worked on a forty (40) hour per week schedule."

ANSWER: Objection. Defendant objects to this interrogatory on grounds that it seeks information protected by the attorney-client and attorney work product privileges. Defendant also objects to this interrogatory on the ground that it seeks irrelevant, immaterial information, and is overly vague, ambiguous and broadly written. Lacking the necessary specificity required for Plaintiff [Defendant] to be able to identify the information sought and is not otherwise reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the objection and without waiving the objection, Defendant answers with the following:

a. Gary Raney, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

b. Kelli Bolicek, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

c. Andrea Patterson, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

Appendix 61

d. Mike Laky, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

e. Roy Holloway, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

f. Randy Folwell, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

g. Vaughn Killeen, 7200 Barrister Drive, Boise, Idaho, 83704 (208) 377-6500.

h. Judy Peavey-Derr, 200 West Front Street, Room 3255, Boise, Idaho, 83702 (208) 287-7000.

i. Fred Tillman, 200 West Front Street, Room 3255, Boise, Idaho, 83702 (208) 287-7000.

j. Rick Yzaguirre, 200 West Front Street, Room 3255, Boise, Idaho, 83702 (208) 287-7000.

k. J. David Navarro, 200 West Front Street, Room 1193, Boise, Idaho, 83702 (208) 287-6887.

l. Derek Voss, 200 West Front Street, Room 3269, Boise, Idaho, 83702 (208) 287-7130.

Defendant reserves the right to supplement this list as warranted by further investigation and/or as discovery may require.

APPENDIX 62 – EXCERPT TAKEN FROM ADA COUNTY'S RESPONSE TO INTERROGATORY NO. 10 (DOCUMENT NO. 21-5, P. 5), VERIFIED BY GARY RANEY, NEWLY ELECTED SHERIFF, FILED FEBRUARY 11, 2005 IN *KNICKERBOCKER, ET AL. V. ADA COUNTY, IDAHO*, CV 04-288-S-BLW

INTERROGATORY NO. 10: Please identify all persons who participated in any way in recalculating the wages due to jail technicians while they worked as 7K exempt between June 1, 2002 and June 1, 2004.

ANSWER: Objection. See Answer to Interrogatory No. 9.

APPENDIX 63 – EXCERPT TAKEN FROM ADA COUNTY'S RESPONSE TO INTERROGATORY NO. 12 (DOCUMENT NO. 21-5, P. 6), VERIFIED BY GARY RANEY, NEWLY ELECTED SHERIFF, FILED FEBRUARY 11, 2005 IN *KNICKERBOCKER, ET AL. V. ADA COUNTY, IDAHO*, CV 04-288-S-BLW

INTERROGATORY NO. 12: Please state the total amount of compensation paid to all jail technicians on or about June 1, 2004, for re-calculation of wages due between June 1, 2002 and June 1, 2004.

ANSWER: Defendant objects to this interrogatory on the ground that it seeks irrelevant, immaterial information, and is not otherwise reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the objection and without waiving the objection, Defendant answers that approximately $52,593.17 was given as additional compensation to jail technicians on or about June 1, 2004.

APPENDIX 64 – EXCERPT TAKEN FROM ADA COUNTY'S RESPONSE TO INTERROGATORY NO. 13 (DOCUMENT NO. 21-5, P. 6-7), VERIFIED BY GARY RANEY, NEWLY ELECTED SHERIFF, FILED FEBRUARY 11, 2005 IN *KNICKERBOCKER, ET AL. V. ADA COUNTY, IDAHO*, CV 04-288-S-BLW

INTERROGATORY NO. 13: Please state the total number of jail technicians who were paid on or about June 1, 2004, for a re-calculation of wages due between June 1, 2002 and June 1, 2004.

ANSWER: Defendant objects to this interrogatory on the ground that it seeks irrelevant, immaterial information, and is not otherwise reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the objection and without waiving the objection, Defendant answers that approximately 64 jail technicians were given additional compensation on or about June 1, 2002.

APPENDIX 65 – ADA COUNTY'S SUPPLEMENTAL AFFIDAVIT OF KELLI BOLICEK, FILED IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, DECEMBER 2, 2004, IN THE MATTER OF *ADA COUNTY V. STACY A. GIBSON*, CV OC 0107394D

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. CV OC 0107394D

SUPPLEMENTAL AFFIDAVIT OF KELLI BOLICEK IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Filed: December 2, 2004

ADA COUNTY,

Plaintiff/Counterdefendant,

v.

STACY A. GIBSON,

Defendant/Counterclaimant.

STATE OF IDAHO)
) ss.
County of Ada)

Appendix 65

KELLI BOLICEK, being first duly sworn upon oath, deposes and says:

1. That as of October 31, 2004, my title has changed from Finance Manager to Finance Director at the Ada County Sheriff's Office and I have worked at the Ada County Sheriff's Office since 1996.

2. That I am personally familiar with this case.

3. That as the Finance Director (and as the past Finance Manager), my responsibilities include oversight of all facets of the Ada County Sheriff's Office finances including overtime calculation, salaries, and payroll records of employees of the Ada County Sheriff's Office.

4. That from October 16, 1998, through July 20, 1999, each of Stacy Gibson's regularly scheduled shifts consisted of 12.2 hours each, representing 12 hours during the shift plus 12 minutes to compensate her for the jail briefing before each shift. Stacy Gibson was compensated for the additional 12 minutes added to each shift.

5. That attached hereto as Exhibit A is a true and correct copy of a letter dated August 11, 1999, from me to Monte MacConnell, which sets forth the accounting used to determine that Stacy Gibson was mistakenly overpaid $8,528.89. Said letter includes an attached spreadsheet from Cheryl Bower that shows Stacy Gibson was overpaid a gross wage of $12,003.89. After subtracting out Federal Taxes of $1,688.75, State Taxes of $867.95, and FICA of $918.30 that were mistakenly paid on her behalf, the net amount remaining was $8,528.89. The same calculation can be arrived at by taking the $7,783.38 net pay amount shown on the spreadsheet and adding back in $703.44

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paid into Stacy Gibson's PERSI account plus $42.07 paid into her Deferred Compensation Account, which again equals $8,528.89.

DATED this 2nd day of December, 2004.

S/ Kelli R. Bolicek
Kelli Bolicek

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN to before me this 2nd day of December, 2004

s/ Betty Gjesdal
Notary Public for Idaho
Commission Expires *12/20/2008*

Appendix 65 – Exhibit A

MEMORANDUM

DATE: August 11, 1999

TO: Monte MacConnell

FROM: Kelli Bolicek

SUBJECT: Amount due from Stacey Gibson

Please see the attached spreadsheet showing the amounts given to Stacey over the 8-month period in question versus the amounts that should have been paid to her. The total amount due from Stacey is $8,528.89 as shown below:

Gross Wage Difference	$12,003.89
Federal Tax Difference	-$ 1,688.75
State Tax Difference	-$ 867.95
FICA Difference	-$ 918.30
Net Due	$ 8,528.89

At this time, Stacey's W-2 will come out showing the full amount received in wages. When we receive payment, the Payroll Department can adjust her "Gross" wages down to the actual amount, which will adjust her withholding taxes. PERSI will work directly with her to adjust the amount paid into her retirement. The deferred compensation piece is in the gross figure to calculate taxes. Then, that amount is backed out to come to her next check. All other benefits were taken as they should have been.

If you have any questions regarding these figures, please give me a call.

s/ Kelli R. Bolicek
Kelli R. Bolicek
Budget Director, Ada County Sheriff's Office

BEST AVAILABLE COPY

Appendix 65 – Exhibit

PAID	GROSS WAGE	FEDERAL	STATE	FICA	PERSI	DEF COMP	DENTAL	HEALTH	DEP LIFE	RET. LIFE	NET PAY
NOVEMBER	$3,226.71	$313.89	$151.83	$236.79	$169.09	$50.00	$21.35	$110.00	$0.45	$12.00	$2,141.21
DECEMBER	$3,391.82	$332.21	$161.30	$246.82	$198.75	$50.00	$55.15	$110.00	$0.45	$12.00	$2,224.94
JANUARY	$3,602.70	$361.39	$172.21	$262.97	$211.12	$50.00	$55.15	$110.00	$0.45	$12.00	$2,367.41
FEBRUARY	$3,075.00	$286.87	$133.46	$222.60	$180.20	$50.00	$55.15	$110.00	$0.45	$12.00	$2,024.27
MARCH	$3,075.00	$286.87	$133.46	$222.60	$180.20	$50.00	$55.15	$110.00	$0.45	$12.00	$2,024.27
APRIL	$3,549.93	$353.94	$168.33	$258.94	$208.03	$50.00	$55.15	$110.00	$0.45	$12.00	$2,333.09
MAY	$3,761.01	$383.74	$183.83	$275.08	$220.40	$50.00	$55.15	$110.00	$0.45	$12.00	$2,470.36
JUNE	$3,233.31	$309.23	$145.08	$234.72	$189.47	$50.00	$55.15	$110.00	$0.45	$12.00	$2,127.21
TOTAL	$26,915.28	$2,628.24	$1,249.50	$1,960.52	$1,577.26	$400.00	$407.40	$880.00	$3.60	$96.00	$17,712.76
SHOULD BE											
NOVEMBER	$1,721.26	$102.60	$42.86	$121.82	$100.87	$42.04	$21.35	$110.00	$0.45	$12.00	$1,167.47
DECEMBER	$1,890.55	$121.19	$52.15	$131.99	$110.79	$43.71	$55.15	$110.00	$0.45	$12.00	$1,253.12
JANUARY	$2,107.26	$150.84	$62.87	$148.57	$123.49	$45.88	$55.15	$110.00	$0.45	$12.00	$1,398.03
FEBRUARY	$1,665.50	$75.14	$26.75	$107.13	$91.74	$40.50	$55.15	$110.00	$0.45	$12.00	$1,046.64
MARCH	$1,565.50	$75.14	$26.75	$107.13	$91.74	$40.50	$55.15	$110.00	$0.45	$12.00	$1,046.64
APRIL	$2,053.08	$143.27	$59.09	$144.42	$120.31	$45.32	$55.15	$110.00	$0.45	$12.00	$1,383.07
MAY	$2,272.32	$173.53	$74.52	$161.19	$133.16	$50.00	$55.15	$110.00	$0.45	$12.00	$1,502.32
JUNE	$1,735.92	$97.78	$36.56	$120.17	$101.72	$50.00	$55.15	$110.00	$0.45	$12.00	$1,152.09
TOTAL	$14,011.39	$939.49	$381.55	$1,042.22	$873.82	$357.93	$407.40	$880.00	$3.60	$96.00	$9,929.38
DIFFERENCE	$12,003.89	$1,688.75	$867.95	$918.30	$703.44	$42.07	$0.00	$0.00	$0.00	$0.00	$7,783.38

Aug 11 '99 9:24 P.0
RDS COUNTY AUDITOR Fax:3642230

EXHIBIT

Post-it Fax Note 7671 | Date 8-12-99 | # of pages 1
To Bobbie | From Wendy
Co./Dept. Sheriff | Co. Auditor
Phone # 670100 | Phone # 2208
Fax # 377-6535 | Fax #

APPENDIX 66 – ADA COUNTY'S AFFIDAVIT OF CHERYL BOWER, FILED IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, DECEMBER 2, 2004, IN THE MATTER OF *ADA COUNTY V. STACY A. GIBSON*, CV OC 0107394D

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. CV OC 0107394D

AFFIDAVIT OF CHERYL BOWER
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

Filed: December 2, 2004

ADA COUNTY,

Plaintiff/Counterdefendant,

v.

STACY A. GIBSON,

Defendant/Counterclaimant.

STATE OF IDAHO)
) ss.
County of Ada)

Appendix 66

CHERYL BOWER, being first duly sworn upon oath, deposes and says:

1. That I am the Controller at the Ada County Clerk/Auditor/Recorder's Office and have worked at the Ada County Clerk/Auditor/Recorder's Office since 1990.

2. That I am personally familiar with this case.

3. That as the Controller, my responsibilities include planning, organizing, implementing and coordinating, the central accounting system, sub-systems, and other financial controls and directing accounting, budgeting, and financial management activities for Ada County.

4. That as the Controller, I have worked with Kelli Bolicek at the Ada County Sheriff's Office to reconcile Stacy Gibson's payroll records.

5. That attached hereto as Exhibit A is a true and correct copy of a spreadsheet I sent to Kelli Bolicek which shows Stacy Gibson was overpaid a gross wage of $12,003.89. After subtracting out Federal Taxes of $1,688.75, State Taxes of $867.95, and FICA of $918.30 that were mistakenly paid on her behalf, the net amount remaining was $8,528.89. The same calculation can be arrived at by taking the $7,783.38 net pay amount shown on the spreadsheet and adding back in $703.44 paid into Stacy Gibson's PERSI account plus $42.07 paid into her Deferred Compensation Account, which again equals $8,528.89.

6. That my own handwritten note on Exhibit A states that Stacy Gibson owes Ada County $8,528.89.

Appendix 66

DATED this 2 day of December, 2004.

s/ Cheryl Bower

STATE OF IDAHO)
) ss.
County of Ada

SUBSCRIBED AND SWORN to before me this 2 day of December, 2004.

s/ Shari Strong
Notary Public for Idaho
Commission Expires *2/4/06*

Appendix 66 – Exhibit A

EXHIBIT A

	GROSS WAGE	FEDERAL	STATE	FICA	PERS!	DEF COMP	DENTAL	HEALTH	DEP LIFE	RET. LIFE	NET PAY
PAID											
NOVEMBER	$3,226.71	$313.89	$151.83	$238.79	$189.00	$50.00	$21.35	$110.00	$0.45	$12.00	$2,141.21
DECEMBER	$3,361.62	$332.21	$161.30	$248.82	$196.75	$50.00	$55.15	$110.00	$0.45	$12.00	$2,224.94
JANUARY	$3,002.70	$301.39	$172.21	$262.97	$211.12	$50.00	$55.15	$110.00	$0.45	$12.00	$2,367.41
FEBRUARY	$3,078.00	$288.87	$133.48	$222.80	$180.20	$50.00	$55.15	$110.00	$0.45	$12.00	$2,024.27
MARCH	$3,078.00	$288.87	$133.48	$222.80	$180.20	$50.00	$55.15	$110.00	$0.45	$12.00	$2,024.27
APRIL	$3,078.00	$288.87	$133.48	$222.80	$180.20	$50.00	$55.15	$110.00	$0.45	$12.00	$2,333.09
MAY	$3,549.93	$353.94	$168.33	$258.94	$209.53	$50.00	$55.15	$110.00	$0.45	$12.00	$2,470.38
JUNE	$3,761.01	$393.74	$183.82	$273.08	$220.40	$50.00	$55.15	$110.00	$0.45	$12.00	$2,127.21
TOTAL	$3,233.31	$309.23	$145.09	$234.72	$188.47	$50.00	$55.15	$110.00	$0.45	$12.00	$2,712.78
	$26,918.28	$2,826.24	$1,580.50	$1,980.52	$1,577.26	$400.00	$407.40	$880.00	$3.60	$96.00	$17,712.76
SHOULD BE											
NOVEMBER	$1,721.28	$102.60	$42.68	$121.82	$100.87	$42.04	$21.35	$110.00	$0.45	$12.00	$1,167.47
DECEMBER	$1,880.58	$121.10	$52.15	$131.99	$110.79	$43.71	$55.15	$110.00	$0.45	$12.00	$1,253.12
JANUARY	$2,107.26	$150.84	$62.87	$148.57	$123.49	$45.86	$55.15	$110.00	$0.45	$12.00	$1,398.03
FEBRUARY	$1,368.50	$76.14	$26.75	$107.13	$91.74	$40.50	$55.15	$110.00	$0.45	$12.00	$1,048.84
MARCH	$1,368.50	$76.14	$26.75	$107.13	$91.74	$40.50	$55.15	$110.00	$0.45	$12.00	$1,048.84
APRIL	$2,053.06	$143.27	$59.09	$144.42	$120.31	$45.32	$55.15	$110.00	$0.45	$12.00	$1,383.07
MAY	$2,272.32	$173.53	$74.52	$161.19	$133.18	$50.00	$55.15	$110.00	$0.45	$12.00	$1,502.32
JUNE	$1,735.82	$97.78	$36.56	$120.17	$101.72	$50.00	$55.15	$110.00	$0.45	$12.00	$1,152.00
TOTAL	$14,911.30	$939.40	$381.33	$1,042.22	$873.62	$367.93	$407.40	$880.00	$3.60	$96.00	$9,929.38
DIFFERENCE	$12,003.89	$1,886.75	$887.96	$918.30	$703.44	$42.07	$0.00	$0.00	$0.00	$0.00	$7,783.38

12,003.89+
-1,533.75-
857.95-
914.53-
8,520.89+

Page 1

Page #1 Fax Note 7671 Date 2-4-99 Pages 1

To Kelly From Mark

Co./Dept. Supt. Co. Phone # 620-90 Phone # 620-K

Fax # 372-6535 Fax #

APPENDIX 67 – [GIBSON] MEMORANDUM SUBMITTED IN OPPOSITION TO ADA COUNTY'S MOTION FOR SUMMARY JUDGMENT, NOVEMBER 1, 2004, IN THE MATTER OF *ADA COUNTY V. STACY A. GIBSON*, CV OC 0107394D

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. CV OC 0107394D

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Lodged: November 1, 2004

ADA COUNTY,

Plaintiff/Counterdefendant,

v.

STACY A. GIBSON,

Defendant/Counterclaimant.

The Defendant above-named does oppose Plaintiff's Motion for Summary Judgment, and does respond to said Motion with those reasons and grounds contained herein and supported by the Affidavit filed herewith. There are substantial and genuine issues of material fact in dispute.

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HISTORICAL STATEMENT OF FACTS

The historical facts surrounding this case are described in detail in the Affidavit of Stacy A. Gibson, contemporaneously filed herewith.

STANDARD OF REVIEW

This Court is well acquainted with the case authority relating to Summary Proceedings. The authority cited by Defendant provides guidance on matters relating to the issues raised here.

The moving party in a summary proceeding must show the Court in what manner there is an absence of any genuine issues of material fact. The burden then shifts to the nonmoving party (Defendant herein) to show that some genuine issues of material fact do exist, and to such an extent it is more than just speculation, or a slight doubt or a mere scintilla of evidence to create a genuine issue. See Quinlan v. Idaho Comm'n for Pardons and Parole, 138 Idaho 726, 729, 69 P.3d 146, 149 (2003), and G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). See also Sprinkler Irrigation Co. v. John Deere Insurance Co., 139 Idaho 691, 85 P.3d 667 (2004).

Pursuant to Idaho case law, the standard of review is the same required of a District Court as it is for the Supreme Court when reviewing a ruling on Summary proceedings. See Friel v. Boise City Housing Authority, 126 Idaho 484, 887 P.2d 29 (1994); Roell v. Boise City, 130 Idaho 199, 938 P.2d 1237 (1997); Kolln v. St. Lukes Regional Medical Center, 130 Idaho 323, 940 P.2d 1142 (1997); Loftus v. Snake River School District, 130 Idaho 426, 942 P.2d 550 (1997); Kimbrough v.

Reed, 130 Idaho 512, 943 P.2d 1232 (1997); Orthman v. Idaho Power Company, 130 Idaho 597, 944 P.2d 1360 (1997); Blome v. Trustca, 130 Idaho 669, 946 P.2d 631 (1997). The pleadings, depositions and admissions on file, together with affidavits, if any, are reviewed by the Court, and only when there is no genuine issue as to a material fact, can a moving party be entitled to judgment or relief as a matter of law. See Hines v. Hines, 129 Idaho 847, 934 P.2d 20 (1997); Farm Credit Bank of Spokane v. Stevenson, 125 Idaho 270, 869 P.2d 1365 (1994); Eastern Idaho Agr. Credit Ass'n v. Neibaur, 130 Idaho 623, 944 P.2d 1386 (1997); Loftus v. Snake River School District, *supra*; Landvik by Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (1997).

Upon consideration and review of the facts to determine whether to grant a judgment in any fashion, the Court must liberally construe the record in the light most favorable to the party opposing the motion, and must draw all reasonable inferences and conclusions in that party's favor, and if the Court determines that reasonable people have differed, or could reach different conclusions or draw conflicting inferences from the facts and evidence presented in the Record, the motion must be denied by the Court, and proceed to trial on the merits of the case. See Brooks v. Logan, 130 Idaho 574, 944 P.2d 709 (1997); Roell v. Boise City, *supra*; DBSI/TRI V v. Bender, 130 Idaho 796, 948 P.2d 151 (1997); Kolln v. St. Lukes Regional Medical Center, *supra*.

Findings of Fact made by a trial court in a summary analysis will not be set aside unless clearly erroneous. The reviewing Court will not be bound by any legal conclusions of a trial court and consequently, the District Court must carefully apply the applicable law, as the Appellate Court is free to draw its own legal conclusions from the facts found. See Highlands,

Inc. v. Hosac, 130 Idaho 67, 936 P.2d 1309 (1997). Upon appeal from mixed questions of law and fact, the appellate court will defer to the findings of fact based on what is found to be substantial evidence, and will exercise free review only over questions of law. See Marshall v. Blair, 130 Idaho 684, 946 P.2d 984 (1996); Loftus v. Snake River School District, *supra*; Mitchell v. Bingham Memorial Hospital, 130 Idaho 420, 942 P.2d 544 (1997); Powell v. Sellers, 130 Idaho 122, 937 P.2d 434 (1997).

MATERIAL FACTS AND GENUINE ISSUES IN DISPUTE

In this case, there exists genuine issues of material fact as to the amount of any alleged overpayment, and as to what offsets, credits and underpayments of Defendant's wages have yet to be accounted for and documented in the County's record-keeping process. Substantial underpayments remain as a result of the County's record-keeping errors. This significant accounting shortage was raised and demonstrated in Defendant's Second Amended Counterclaim (dismissed by this Court), and now evidenced further by the case authority cited in Defendant's Memorandum in support of her Motion requesting this Court to reconsider its Interlocutory Order entered September 16, 2004. The genuine issues are clearly demonstrated, as evidenced by Defendant's Affidavit filed in support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment. Those specific issues of material fact in dispute in this case are as follows:

1. On at least seven (7) separate occasions, listed on seven (7) different documents, various Ada County personnel have alleged at least five (5) distinctly different sums the County has alleged were erroneously deposited into the

joint checking account of Defendant and her husband, as wage payments. On the first page of Sheriff Killeen's August 2, 1999 Notice of Intent to Impose Discipline (See Exhibit 29 of Stacy Gibson's Affidavit), Sheriff Killeen states the wage overpayment is $8508.88; on page 10 of Detective Glenn's Case Status Report (See Exhibit 30 of Stacy Gibson's Affidavit), Detective Glenn states the wage overpayment is $7,297.17; on Kelli Bolicek's August 11, 1999 communication to R. Monte MacConnell (See Exhibit 35 of Stacy Gibson's Affidavit), Ms. Bolicek declares the amount to be $8,528.89; on the attachment to Ms. Bolicek's August 11, 1999 letter, "Cheryl", who is at the Ada County Auditor's Office, calculated the wage overpayment to be $7,783.38; and in the December 27, 1999 letter to counsel (See Exhibit 55 of Stacy Gibson's Affidavit), Sheriff Killeen states the overpayment to be over $8,500.00.

The fact is Ada County personnel have stated different amounts, demonstrating their inability to perform their record-keeping responsibilities, and because of that functional inability, cannot allege in a summary judicial proceeding a purported sum that properly, correctly and accurately reflects a reconciled amount of the overpayment status, or the reconciliation as to what wages are yet due Defendant, as was identified in the counterclaim, and is specifically addressed in the Affidavit submitted to the Court. This account status and wage dispute represents a specific issue of material fact that is in dispute in this matter.

2. The Affidavit of Kelli Bolicek, sworn under oath, is a conclusory, speculative, and are incorrect portrayal of misleading, unsupported accounting, based upon hearsay from the calculations of the Ada County Auditor's Office, who have postulated different figures, and part of the erroneous record

presentation. These calculations cannot be relied upon by this Court for two (2) reasons. In paragraph 3 of her Affidavit, Ms. Bolicek asserts Defendant was mistakenly overpaid between October 1998 and June 1999. Defendant was "officially" *granted* transfer and promotion to the Sheriff's Jail Facility, as a Jail Technician II, effective October 16, 1998. That was identified in the Notice of Personnel Action, as authorized, approved and recommended by Sheriff Killeen, and approved by the Board of County Commissioners and County Human Resources Director, Terry Johnson. See Exhibit 15 of Stacy Gibson's Affidavit.

Pursuant to Defendant's transfer and promotion to the Jail Facility, Defendant was given an increase in monthly wages, pursuant to the Sheriff's Pay Plan, and it went from $1,500.00 monthly to $1,550.00 monthly. Ada County Payroll Department personnel were supposed to pay Defendant "½ month as Police Records Clerk and ½ month as Jail Technician." See Exhibit 15 of Stacy Gibson's Affidavit.

That it was in late October 1998, and after October, that Ada County Payroll Department personnel presented the administrative error they had created in Defendant's position and resulting wages, because of her job assignments. This consequence is a violation of the record-keeping requirements of the *Fair Labor Standards Act*, § 211 I. Entered on the erroneous records was the statement: "pay ½ month as Police Records Clerk and ½ month as Jail Technician." This "administrative error" is characteristic of Ada County's "two-rate" system of payment (referred to in Ada County's Complaint as a "mixed paycheck") and that was the culprit that they contend began the basis for the error, and caused Defendant's detrimental "mistaken receipt of money."

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It was sometime after November 1, 1998, but before November 30, 1998, and thereafter through July 19, 1999, that Ada County Payroll Department perpetuated the error and continued the County's violation of the *Fair Labor Standards Act*, § 211 I, and carried the accounting error into their direct deposit program. Not only do we have the erroneous process by which Payroll combined Defendant's monthly wages for what they assessed to be two (2) different jobs, but also Payroll mistakenly calculated her pay raise and overtime wages, the combined effect of which caused an unspecified overpayment to the joint account of Defendant and her husband, made by direct deposit for a period of what our research demonstrates to be eight (8) consecutive months. The County has never produced an accounting of this overpayment and mistaken pay raises, overtime wages, and underpayment issue, except as identified by those limited efforts undertaken by Kelli Bolicek. At the time this error was created, Defendant was fully *classified as a permanent status employee*, had vested rights under such tenured status, and was to receive all entitlements, benefits, rights and protection under the *Fair Labor Standards* Act (FLSA), 29 U.S.C § 201 *et seq.* and the *Idaho Public Employees Protection Act*, Idaho Code, § 6-2101 *et seq.*, as announced in the provisions contained in the Ada County Code, County Personnel System, § 1-7-1 through § 1-7L-10. See Exhibits 15, 20, 21, attachment page 1, 25, page 3, 29, page 1, 30, page 2 & 10, 35, attachment, 61, page 1, & 64 of Stacy A. Gibson's Affidavit.

The Affidavit of Kelli Bolicek unequivocally demonstrates Ada County's ongoing confusion concerning the complexity of the issues in this dispute, and the manner in which Ada County has instead elected to conceal the relevant accounting and material issues of fact surrounding their conduct.

3. Kelli Bolicek is not deemed qualified to submit an opinion as to the sum or sums Ada County has alleged to be an overpayment, or a reconciliation of the wage amounts due to Defendant. As a Finance Manager at the Ada County Sheriff's Office (her title at the time was Sheriff's Budget Director), her job description states she "monitors the overtime submitted by employees and prepares monthly report for the Sheriff". See Exhibit 1 attached hereto. Nothing in her job description would qualify her to access information required to reconcile, attest to or comment on the amounts Ada County allegedly "overpaid" or "underpaid" Defendant in step pay, raises or promotional advances. She has yet to reconcile the regular and overtime wages yet due to Defendant. Any statement or Affidavit of Ms. Bolicek is unreliable and must be considered hearsay on the issue of overpayments and underpayments. Those payroll issues include regular pay, overtime pay, holiday pay, vacation pay, deduction for State and Federal Taxes, FICA, PERSI, deferred compensation, dental plan deductions, health plan deductions, dependent life insurance, and retirement life insurance. This Court should not consider Ms. Bolicek's Affidavit as presenting any accurate, meaningful or correct account of what Defendant has coming for her wages, or for the repayment of any alleged or potential liability of an over-deposit in this dispute.

A Payroll Specialist with the Ada County Auditor's Office, or with an independent agency, would be qualified to provide an affidavit of an accurate accounting testimony concerning these payroll issues, based on the experience and involvement by Defendant with this agency. See Exhibit 2 attached hereto. Defendant must reject the opinion of the Finance Director (Budget Director) because of Ada County's ongoing confusion concerning the facts in this case, and the fact Ada County has alleged amounts, just as to the overpaid status, anywhere from

$7,297.17 to $8,528.89. If there is to be an accurate accounting of what Ada County has purportedly overpaid Defendant, it must be upon an order of this Court directing Ada County Payroll Department to engage the services of an independent payroll specialist agent to conduct an unbiased audit, retained at the County expense, with judicial authorization to reconcile all salary entitlements concerning Gibson for regular wages, overtime wages, compensation time, sick leave, earned vacation, insurance (medical, life, family), Workman's Compensation and disability benefits, retirement benefits, and all other benefits provided to Ada County employees, through the period of her protected and tenured employment as a classified permanent employee. Furthermore, such a Court order must direct the unbiased agent to reconcile the true and correct amounts Ada County has alleged was erroneously overpaid, from November, 1998 though June, 1999.

4. The most significant issue of material fact that precludes this Court from allowing summary disposition, is the reality Defendant has a Federal statutory "right of action" to recover from Ada County her wages due her pursuant to the causes of action detailed in her Second Amended Counterclaim. Once that judicial process is completed, Ada County may be entitled to an to "offset" as determined by an independent audit, from Defendant's recovery under that amended counterclaim, to restore the account status from their erroneous direct deposits to the joint checking account. Plaintiff may not deduct from Defendant's overtime wages still owed or from the amounts that should have been previously withheld. Such offsets are not among those permitted under FLSA, because Ada County erroneously overpaid Defendant. See Renteria v. Italia Foods, Inc., Case No. 02 C 495, United States District Court, N.D. Illinois, Eastern Division (2003).

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Defendant has always acknowledged there is the contention she was overpaid by virtue of Ada County's payroll errors, but no third-party reconciliation or auditing has been performed, after being requested numerous times by Defendant and her counsel. In the County's Motion for Summary Judgment, Ada County argues Defendant has placed the County in an inequitable position because she has not repaid the County. That concept not only lacks merit, but also logic. What is truly inequitable is the fact the County has not conducted the needed reconciliation or independent audit required in such a mandatory wage accounting process, even required by FLSA. Also inequitable is the decision of this Court that currently has precluded Defendant from engaging her Federal statutory "right of action" for recovery and what is yet due her from Ada County under FLSA, so she may recover everything she is owed by Ada County, eventually to include her employment reinstatement.

Another issue considered unfortunate or inequitable is to see this Court allow Ada County's theories of State prerequisites (notice-of-claim issues) offset a Federal right of action, and to engage this Court with their flawed arguments concerning this dispute. On page 7 of the County's Memorandum they would submit yet another false statement, and frivolously argue "Once the monies were put into her joint bank account, Ada County lost control of them and did not have the ability to recover those monies on its own". This serves to demonstrate our point of the County's absolute failure to understand this accounting debacle. Ada County possessed the exclusive right of debit on this account. These arguments are not just factually flawed, but entirely fallacious. Defendant was required to execute the Automatic Paycheck Deposit Authorization form on May 6, 1998, and that document authorized Ada County to "*initiate, if necessary,*

debit entries and adjustments for any credit entries in error to my account indicated above". See Exhibit 10 of Stacy A. Gibson's Affidavit. Ada County alone had the authority to seek debit entries and adjustments for any errors to Defendant's joint checking account, made or caused by them. Why does the County persist with this factual deceit? Ada County had the ability, the authority, and the right, to engage not only the accurate record-keeping (as required of them), but also a debit entry for any sums they may have overpaid to Defendant's joint checking account. The dilemma was the record-keeping errors they caused or created, were so extensive that Ada County finally chose to investigate the cause of their errors, first thought to be monies yet due to nine (9) employees for shorted overtime pay. Once they concluded Ms. Gibson had received an overpayment, instead of pursuing the pay reduction provisions under the County Code, they foolishly fired her for capricious reasons. What Ada County did do, unfortunately, when they decided to investigate the matter, was to let the process go in the wrong direction, and instead of investigating how the errors unfolded in the Payroll Department, the County agents interrogated Defendant, foolishly threatened her with malicious prosecution, retaliated and discriminated against her, for telling them the system has always been in error, and then decided not to pay her what they owed her, and then decided to terminate her employment altogether, all of which was being accomplished in violation of the *Fair Labor Standards Act*. This is what is fundamentally inequitable in this dispute, as Ada County created their own errors, and the County then failed to pursue the reduction in wages pursuant to § 1-7C-6B, A.C.C., and then wrongfully terminated a dedicated and loyal employee.

Once a legitimate reconciliation has been completed, and once this Court has allowed Defendant to proceed against Ada

County with the Federal statutory "right of action" conferred upon her by 29 U.S.C. § 216 (b), as a result of the County's violations of FLSA, this case only then may be equitably and lawfully resolved. Ada County is legally and morally required to reinstate Defendant's employment with the Ada County Sheriff's Office, with the requisite recovery of all back pay due for regular wages, overtime wages, and employment entitlements and benefits, in accordance with Defendant's protected status as a permanent and classified Ada County employee, which includes sick leave, vacation pay, additional holiday pay, additional overtime pay, step increases, cost of living increases, continued medical insurance benefits, continued family coverage benefits, continued life and disability insurance, Workman's Compensation coverage, retirement benefit funds for PERSI (representing 6% of total monthly wages) and PEBSCO (an employee contributory retirement plan), together with available training benefits, and recovery of all other benefits as a result of this "inequitable" wage and record-keeping procedure that caused the administrative error and some overpayment of Defendant's wages into a joint checking account under the direct deposit system used by the County. A true reconciliation of all such wages and benefits are required to address the "mistaken receipt of funds" from the County's negligence and ongoing violations of the FLSA provisions announced in 29 U.S.C. § 201 *et seq.*, and once those funds are paid to Defendant by Ada County, then an offset from such a reconciliation provided to the Court could be properly addressed.

Based upon the material facts existing and perpetuating within this dispute, as demonstrated by the Affidavit of Stacy A. Gibson submitted herewith, Defendant has unequivocally demonstrated factual disputes her right to eventual reinstatement, her right to receive offsets, her right to receive

credits for wages due her, and her right to an unbiased resolution, and Plaintiff's Motion for Summary Judgment therefore should be denied.

Dated This 1st day of November 2004.

S/ Vernon K. Smith
Vernon K. Smith
Attorney for Defendant/Counterclaimant

APPENDIX 68 – ADA COUNTY'S AFFIDAVIT OF KELLI BOLICEK, FILED IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, SEPTEMBER 29, 2004, IN THE MATTER OF *ADA COUNTY V. STACY A. GIBSON*, CV OC 0107394D

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. CV OC 0107394D

AFFIDAVIT OF KELLI BOLICEK
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Filed: September 29, 2004

ADA COUNTY,

Plaintiff/Counterdefendant,

v.

STACY A. GIBSON,

Defendant/Counterclaimant.

STATE OF IDAHO)
) ss.
County of Ada)

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KELLI BOLICEK, being first duly sworn upon oath, deposes and says:

1. That I am the Finance Manager at the Ada County Sheriff's Office and have worked at the Ada County Sheriff's Office since 1996.

2. That I am personally familiar with this case.

3. That the Eight Thousand Five Hundred Twenty Eight and 89/100 Dollars ($8,528.89) set forth in Ada County's Complaint in this matter reflects a net amount adjusted for taxes withheld that was mistakenly paid to Stacy Gibson between October 1998 and June 1999.

4. That as a result of her change in position from Records Clerk to Jail Technician, Stacy Gibson's base salary should have been increased from $1,500.00 per month to $1,575.00 per month. Though Stacy Gibson's base pay was originally shown as increasing to $1,550.00 instead of $1,575.00, the $25.00 discrepancy was corrected and she was compensated the difference as shown by a true and correct copy of a Notice of Personnel Action dated March 1, 2000, attached hereto as Exhibit A.

DATED this 29th day of September, 2004.

s/ Kelli Bolicek
Kelli Bolicek

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STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN to before me this 29th day of September, 2004.

s/ Betty Gjesdal
Notary Public for Idaho
Commission Expires *12/20/2008*

Appendix 68 – Exhibit A

NOTICE OF PERSONNEL ACTION

SHERIFF Sec. Sup.		Emp. General No.: 54224	Effective Date:	02/01/2000
Last Name: Gibson	First Name: Stacy	Middle: A.	Soc. Sec. No.: 518-78-2239	Sex/Race: F/C
Address: 5501 Tinker St. Boise ID 83709			Birth Date: 08/30/1956	Perm. Emp.: M
Class Title: Police Records Clerk II			Employee Status: Ent. Prob.	
Class Code: 127	Pay Grade: 60		Rate of Pay: $1,500.00 Per Mo. $18,000.00 Per Yr.	
FILL IN CHANGES ONLY:				
New Last Name:			New Step/Merit Status:	
New Address:				
New Class Title: Jail Technician II			New Employee Status:	
New Class Code: 680	New Pay Grade: 60		Last Rate of Pay: $1,575.00 Per Mo. $18,900.00 Per Yr.	

REMARKS:

Correction of Salary with 5% increase due to Promotion on 10/16/98
Please make retroactive to 10/16/98 ($12.50 - October 98):
11/98,12/98,1/99,2/99,3/99,4/99,5/99,6/99,7/99,8/99 - $25.00 ea month = $250.00
Total $262.50

Total Overtime Hours During this period: 227.25 X .14 = $31.82 Due

Grand Total Due: $293.32

EMPLOYER Signature / Date	ADA COUNTY COMMISSIONER ☐ Approved ☐ Disapproved Date Date Date
APPOINTING AUTHORITY Authorized Signature Official Title: 3-1-00 Date	DIRECTOR OF HUMAN RESOURCES Date

White — HR Dept. Yellow — Payroll Dept. Pink — Originating Dept. Gold — Employee

EXHIBIT
A

BEST AVAILABLE COPY

APPENDIX 69 – LETTER FROM ADA COUNTY UNDERSHERIFF, GARY RANEY (LATER ELECTED SHERIFF), TO DAWN K. MCKINNEY, DATED JUNE 1, 2004, ADVISING REASONS SHE WAS SENT COMPENSATION DUE TO COUNTY'S MISUSE OF "7K" EXEMPTION

June 1, 2004

Dawn K. McKinney
1856 North Swainson Avenue
Meridian, Idaho 83642

Dear Dawn:

I want to take this opportunity to explain the enclosed check. Many years ago, most jail technicians were put on the same schedule as commissioned jail deputies, both for continuity of the work and because it seemed to offer a benefit to the employees by having the four-on, four-off schedule. At that time, the Sheriff's Office believed that federal law allowed the schedule for law enforcement personnel who worked in the jail. During the last few months, I have taken a fresh look at our practices in light of emerging case law under the Fair Labor Standards Act. I now believe that, regardless of the past interpretations, the working conditions for jail technicians today do not meet the criteria necessary to work someone under the 7K exemption to the FLSA.

As you know, you received at least straight time (1:1) compensation for all hours you worked while you were on the four-on, four-off schedule. You also were compensated for all hours over forty-eight in a week's period. A careful examination and recalculation (using 40 hours per week as the

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scheduled number of hours) of your timesheets resulted in the number of previously uncompensated hours. The calculations are identical to how all overtime is/was calculated, i.e. after working (actual hours) forty hours in a given week, deducting any time already compensated at the 1.5 rate, the remaining time over forty hours equals your uncompensated hours due. Because you were already paid straight time for those hours, the remaining hours were multiplied by .5 at your highest rate of pay. This check represents the difference between the straight time you earned and the additional half you should have earned after a forty-hour week.

Also included in this check are two factors that represent our apology to you for not calculating this properly the first time. One is that the rate calculations are at the highest hourly wage you earned as a jail technician, regardless of when it went into effect. Secondly, we have added an additional 5% to the total for your convenience.

Using the Fair Labor Standards Act as a guide, we went back two years for calculations. Time sheets were recalculated for the time you worked as a 7K exempt jail technician between June 1, 2002, and June 1, 2004. The enclosed check has been treated as a paycheck, that is, taxes, etc. have been deducted.

I want to take this opportunity to thank you for your work while you were here and express my hope that you feel we are doing the right thing by being forthright in correcting a past mistake. Please sign the enclosed Release and mail it back in the self-addressed stamped envelope. If you have any questions, you may contact Captain Randy Folwell at 377-6711 or me at 377-6505.

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Sincerely,

VAUGHN KILLEEN
Ada County Sheriff

s/ Gary Raney
Undersheriff Gary Raney

Enclosures

APPENDIX 70 – THE FLSA "RELEASE" OR "WAIVER" ENCLOSED WITH LETTER (APPENDIX 69) UNDERSHERIFF, GARY RANEY, SENT TO DAWN K. MCKINNEY, DATED JUNE 1, 2004

I, _____ hereby acknowledge receipt of _____ ($_____) from Ada County as payment in full for unpaid wages, employment benefits, and other compensation due me as a result of employment with the Ada County Sheriff's Department. I accept this amount as full payment of unpaid wages and benefits under the Fair Labor Standards Act.

_____

Signature

APPENDIX 71 – LETTER FROM GIBSON'S COUNSEL TO ADA COUNTY SHERIFF, VAUGHN KILLEEN, DATED JUNE 1, 2004 (STEMMING FROM DISCOVERY OF APPENDIX 69), REQUESTING THE COUNTY DISBURSE FUNDS TO GIBSON BECAUSE OF THE MISUSE OF THE "7K" EXEMPTION WHICH CAUSED UNDER COMPENSATION TO HER AS A JAIL TECHNICIAN

June 1, 2004

Vaughn Killeen
Ada County Sheriff
Ada County Sheriff's Office
7200 Barrister
Boise, ID 83704

Dear Sheriff Killeen:

It has come to our attention that on Thursday, May 27, 2004, Ada County Payroll, through the assistance of the Sheriff's Office, made disbursements of funds to individual "white shirt" employees of the Jail Facility due to your department's historical misapplication of the "7k exemption" to its employees.

On February 2, 2004, Ms. Stacy A. Gibson filed an amended counterclaim against Ada County and the Sheriff's Office. In that amended counterclaim, it was specifically detailed the concerns as to the historical abuse and misapplication of the mandatory obligations as required by the *Fair Labor Standards Act*, 29 U.S.C., § 201 *et seq.* (FLSA), and specifically including your department's ongoing violations of the "7k exemption".

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It appears that on March 2, 2004, the Board of Commissioners held a staff meeting with members of your department, and on March 5, 2004, a member of your department (Mike Laky) sent out his e-mail to numerous Sheriff's Office employees concerning how "white shirt" work shifts were going to be changed from 12 hour shifts to 10 hour shifts. The e-mail states the "change was needed to bring us in line with FLSA rules", and that the "change will take place on April 4th along with the normally scheduled Jail shift change".

It has now been communicated to us that the County Commissioner's allotted approximately $250,000.00 to your department to pay the overtime due to the Jail Facility "white shirts" because of the ongoing "7k exemption" violations, and on Thursday, May 27, 2004, those "white shirts" affected by your department's failure to reimburse overtime, have now received those past due amounts owed to them.

At this time, we request you direct a true and correct accounting and reconciliation of all wages owed to Stacy Gibson that will address your incorrectly applied interpretation of the FLSA "7k exemption". Submit that information to my office, along with a check made payable to Stacy A. Gibson for those funds owed her for overtime pay mandated by the *Fair Labor Standards Act*.

I await your response, and until then, I remain,

Yours very truly,

s/ Vernon K. Smith
Vernon K. Smith

VKS/jmg
cc: Ray J. Chacko

APPENDIX 72 – LETTER FROM GIBSON'S COUNSEL TO ADA COUNTY ATTORNEY, RAY J. CHACKO, DATED JUNE 18, 2004, ADVISING AWARENESS ADA COUNTY UNDER COMPENSATED JAIL TECHNICIANS BECAUSE OF THE VIOLATION OF THE "7K" EXEMPTION, KNOWLEDGE OF THE COUNTY'S RECENT EFFORTS TO DISBURSE FUNDS TO JAIL TECHNICIANS FOR UNDER COMPENSATED OVERTIME, AND DEMAND ADA COUNTY DISBURSE FUNDS TO GIBSON IN A NON-DISCRIMINATORY MANNER, PURSUANT TO FLSA

June 18, 2004

Ray J. Chacko
Deputy Prosecuting Attorney
Ada County Prosecutor's Office
200 West Front Street
Room 3191
Boise, ID 83702

Dear Mr. Chacko:

I received your letter of June 7, 2004, expressing concern over my letter to our elected official (Ada County Sheriff) concerning disbursements being made to past and present employees who were shorted pay under the misuse of the "7k exemption".

The letter was sent to this elected official (the Sheriff), as he is officially charged with the responsibility for making those pay adjustments and pay disbursements, or be subject to charges and severe penalties under the provisions of the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C. § 216, which

you have now come to be familiar. I sent a copy of our correspondence to your office so you would be aware of my official communication and demand to the elected Sheriff of Ada County. The purpose of my letter is set forth in its contents.

If you believe this subject matter is exclusively confined to our pending litigation, and you, as an attorney for the Sheriff and Ada County, want the exclusive right of contact, then I must also assume you have accepted the official responsibilities to make certain these disbursements are made, not inappropriately withheld, as a delegate of the responsible party under Federal law. You cannot hold back funds on some theory there may eventually be a settlement of the litigation, or some other basis to withhold wages. That constitutes a willful violation of FLSA. (Please review Title 29 U.S.C. § 215 (a)(3).

We have received confirmation the Ada County Sheriff's Office is distributing funds to all past and present employees not paid for their services as required under FLSA, due to the misuse of the "7k exemption". The Commissioners had set aside $250,000.00 to fund this corrective effort. The Ada County Sheriff has exclusive documentation on who these past and present employees are, and would have the accounting for what disbursements are to be made to each employee. The Sheriff has a duty to disburse those funds to the employee, or yet another claim comes into being for unlawfully withholding payments well past due for wages and salaries owing. A class action suit may not be forestalled if disbursements are withheld. Knowing a disbursement to Ms. Gibson has been allocated, it must be distributed, but for some reason under your control, if it is being withheld, concealed or denied to her, awaiting possible settlement of our pending legal disputes, then

I need to know that information so I may take such action as necessary to secure payment to her or undertake further action for this confirmed FLSA violation, and now the County's refusal to disburse the wages after the repository official (County employer) has confirmed the violation and funds have been allocated to make payment.

It was never my understanding you had assumed the role to disburse the wages and earnings of these past and present employees, when appearing as counsel for the County and Sheriff's Office in the reimbursement wage claims dispute, Case No. CVOC 0107394D. It remains my understanding the Ada County Sheriff has that sole duty and responsibility under the role as employee supervisor. It is possible this duty may have been delegated to the County Payroll Department, but there has been no indication of that to date. I sent a copy of the letter directly to your office so you would be fully apprised that an accounting has been made from the FLSA violations under the "7k exemption", and that disbursements were being made to past and present employees to rectify the wages wrongfully withheld previously. I do not share your perception that my letter to a public official violates Rule 4.2 of the *Idaho Rules of Professional Conduct*, under your expressed theory a suit in court prohibits official correspondence to elected County officials who are charged with the responsibility and duties of maintaining the wage and employee records of past and present employees. Litigation pending over ongoing wage and record-keeping violations within the subject matter of that litigation does not abolish our need to make formal demands upon public officials to perform their official duties under Federal law. If the Sheriff (or you) choose to discriminate against Ms. Gibson because of the pending Complaint, then a new violation has come into being under Title 29 U.S.C. § 215 (a)(3).

If it be your attitude you do not want me to contact the official employer to make official demand from the only responsible party, the Ada County Sheriff's Office, the repository of these wage records and the department with the responsibility to make these disbursements and payments, then I must put the burden upon you to immediately undertake the action necessary to cause that appropriate disbursement to us forthwith, identifying the specific pay records, hours and adjustments being made for wages due Ms. Gibson as a result of these violations of the "7k exemption". We know these funds have been allocated and disbursed, but she has yet to receive her disbursement, and my office has not been advised of the accounting for her wages.

If Ms. Gibson's disbursements are being withheld, merely because you say we are in litigation with Ada County and the Sheriff's Office over her wrongful termination, or over the wrongful accounting, or over the inaccurate and inadequate pay records and wage accounting records, or the Workmen's Compensation dispute over her workplace injury, or some misperceived theory of a statute of limitations, then it would appear she is being denied wages due and owing her, for willfully wanton reasons. Her counterclaim (complaint) over FLSA violations effectively tolled the statute in any event, as the subject matters of wages, accounting, withheld payments and overpayments, date back in every respect to Ada County's suit filed on November 7, 2001. See Rule 15 (c), I.R.C.P., and Title 29 U.S.C. § 255. If you withhold the accounting and disbursement for this confirmed violation of the "7k exemption", she would have a further cause of action for yet another willful FLSA violation, and that results in statutory charges against the Ada County Sheriff, and whoever else may claim responsibility for such disbursements. Also, be assured there is a $10,000.00 fine for such willful violation of FLSA,

well knowing the withheld wages must be disbursed to past and present employees, and Ms. Gibson's funds are being withheld, and she is being discriminated against because she has filed one or more complaint(s). See copy of memorandum from R. Monte MacConnell we have obtained, dated December 27, 1997 attached hereto.

Because of this willful conduct, and deliberate disruption of all official avenues of communication, we now make demand upon Ada County, through this letter to you, for not only her past wages wrongfully withheld under the "7k exemption", but also our statutory liquidated damages, which is a mandatory assessment equal to the wage and disbursements withheld. See 29 U.S.C. § 216 (b). Once again, these events are seen as deliberate stonewalling and bad faith, and being done wrongfully, because Ada County is retaliating against Ms. Gibson over her unwillingness to resign under threat of termination and malicious prosecution, and her reliance upon her rights protected by this FLSA employment. A Federal Court would not tolerate this ongoing conduct like the more lenient protective Ada County Courts are inclined to do in these misguided agency mishaps. The "behavior" actually in question is the County's treatment of their employees, not some perception of behavior to have inappropriate contact with an elected official, thinking somehow we want to or even could influence any of them, in violation of Rule 4.2. All we would ever want Ada County to do, just like any other agency or citizen, is to obey the Federal and State law.

If it be your desire to accept the responsibility and duty for disbursement of these funds from such an assignment from the Sheriff, then it may be an attempt to delegate that responsibility and duty of the wage and record-keeping

process, and the Federal authority is quite clear on the point; no such delegation, assignment or transfer of that authority is allowed or acknowledged under the law, and the liability and responsibility continues with Ada County and the Ada County Sheriff's Office to undertake the accounting, record-keeping, and disbursement of these funds.

For "any person" (whether it be a Sheriff, a Legal Advisor, a Detective, a County Attorney, or a Commissioner), to aid or abet an employer in any process or proceeding that allows an employee to be discharged, or retaliated against for engaging in their protected rights and activities under the *Fair Labor Standards Act*, it is considered to be unlawful conduct. See 48A Am Jur 2d, § 4456 & § 4457 (1997).

According to your June 7, 2004 letter, and my brief discussions with you on June 16, 2004, I am inclined to believe her disbursements are being withheld because of the pending suit, or maybe because of a limitations issue, each of which is wrongful. Under no circumstance are we attempting to settle our litigation over the wage-reimbursement dispute; the pending action concerns elements beyond the "7k exemption" misuse, and the limitations issue was tolled, not to mention also the "acknowledged violation" is just recently confirmed. These known wages are due; the "7k exemption" misuse has been confirmed by investigation and now stopped, and an accounting has been conducted, and without argument, or any debate, or need for any global settlement of other issues, these funds were wrongfully withheld, and Ms. Gibson, as well as all others, have a right to mandatory liquidated damages, and in Ms. Gibson's case, must be paid, and if Ada County continues to violate their mandatory record-keeping and pay responsibilities as required by the provisions of FLSA, § 211 (c), and continues to withhold her earned wages on any theory

of pending litigation or her complaint(s), or the statute of limitations, then Ms. Gibson (whose first name is spelled Stacy, not Stacey) will advise the Department of Labor, and effectively cause a Federal investigation, and she will file suit in Federal Court, which will necessarily include charges and further fines for such violations.

If you have assumed the duty and responsibility for this payment, and if you are saying the funds due Ms. Gibson will be withheld and will not be paid as required under FLSA, for whatever may be your reasoning, then please make that point crystal clear to me, so I will fully understand what your logic and choice has been. I will then be instructed to report this to the Department of Labor, and file a new suit against Ada County, the Board of Commissioners and the Ada County Sheriff's Office (any others claiming responsibility) in Federal Court, setting forth the illegal and unlawful withholding of the accounted for disbursement of wages owing a former County employee, as a result of the acknowledged misuse of the "7k exemption" and seek not only the appropriate wage, liquidated damages, attorney fees, and charges under the statute for such violations, but also civil penalties ($10,000.00) as allowed and enforced under such situations. The Department of Labor supports actions to recover wages and mandatory liquidated damages, interest, fees and costs.

Ada County has become so entrenched in its recalcitrant conduct towards Ms. Gibson that it appears to have clouded its assessment of these elementary legal disputes, the need for official demands, and a compromised attitude as to the exercise of their duties to its many loyal employees.

Of interest, on June 16, 2004, the U.S. Postal Service announced that 41,434 postal workers had been overpaid due

to a computer error. The total amount of the overpayment was $165,736,000.00 (our case is a dispute over erroneous deposit of $8,528.89). Not one of those workers were interrogated, falsely accused, threatened by extortion, or terminated because of the administrative error. See attached copy of news article.

We have also been informed the Sheriff's Office recently elected to change the manner in which non-commissioned employees (white shirts) will be compensated. It is our understanding only commissioned officers and dispatch personnel will now be compensated under the Sheriff's Pay Plan, and additionally, all Sheriff's Office employees no longer will receive longevity pay. There is concern among some employees they will be discriminated against because of this impromptu modification to the manner in which their earnings will be considered, especially by those who are aware of the manner in which Ms. Gibson was treated.

Other employees of the Sheriff's Office currently have concern about the manner in which they will be compensated. Some "white shirt" Jail Technicians will be "reclassified" to detention officer status due to the Jail Facility expansion. Undersheriff Gary Raney addressed this matter on March 2, 2004, during the Sheriff's Office Staff Meeting with the Ada County Board of Commissioners. If the Sheriff's intention is to compensate those "reclassified" non-commissioned employees by still utilizing the "7k exemption", it remains questionable, as it will take more than changing the employee's job title in order to become compliant with FLSA. If you need further information regarding this issue, refer to Title 29, Part 553 of the Code of Federal Regulations.

Once again, because you have chosen to officially assume the responsibility for all communications, demands and

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payment of these disbursements, you would have the corresponding duty to communicate our demands to the officials, and I trust you will make certain our demands are brought to the attention of the responsible parties (the Sheriff and the County Commissioners). If this misused "7k exemption" fund is not disbursed to Ms. Gibson, together with the mandatory liquidated damage assessment (its double instead of treble as is the case in other civil disputes), and disburse these funds to my office within ten (10) days, then I will be instructed to regard this letter as the last demand and final effort to get performance from the County, and the Sheriff, and will be assigned the task to proceed to Federal Court on the discriminatory violation proceeding. This letter to you is the only means of communication you have chosen to allow us as a means of access to our elected responsible officials, so please act accordingly. I remain,

Yours very truly,

Vernon K. Smith

VKS/jmg

Enclosures

APPENDIX 73 – [GIBSON] VERIFIED SECOND AMENDED COUNTERCLAIM, FILED FEBRUARY 2, 2004, IN THE MATTER OF *ADA COUNTY V. STACY A. GIBSON*, CV OC 0107394D

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. CV OC 0107394D

SECOND AMENDED COUNTERCLAIM

Filed: February 2, 2004

ADA COUNTY,

Plaintiff/Counterdefendant,

v.

STACY A. GIBSON,

Defendant/Counterclaimant.

COMES NOW The Defendant above named, as a Counterclaimant herein, and for a Second Amended Counterclaim against Ada County, does allege as follows:

GENERAL ALLEGATIONS

1. That Ada County is a political subdivision of the State of Idaho.

2. That Stacy A. Gibson (hereafter Gibson) is a resident of Ada County, Idaho.

3. That Gibson did submit her application for employment to the Ada County Sheriff's Office, a Department of said Ada County, on April 22, 1997, for position of Police Records Clerk I.

4. That Gibson did agree to the Sheriff's Office Hiring Standards and conditions of employment on April 29, 1997.

5. That Gibson was hired and became an "employee" of said Ada County, and specifically the Ada County Sheriff's Office as defined by § 6-2103 (3), Idaho Code; Ada County Code, County Personnel System, Chapter 7, § 1-7-1 through § 1-7L-10; and the *Fair Labor Standards Act* of 1938 (FLSA), as amended, Title 29 U.S.C., § 203 (e), and was paid by said Ada County as her employer, through the Ada County Payroll Department.

6. That Gibson was initially employed as a Records Clerk I, assigned to the Boise State University (BSU) Substation of the Sheriff's Office, at a designated wage of $1,215.00 each month, effective July 10, 1997.

7. That effective October 1, 1997, Gibson was given an increase in wages from $1,215.00 monthly to $1,350.00 monthly, based upon the Sheriff's Pay Plan (11.1%).

8. That on July 29, 1998, Gibson was recommended and approved for "Permanent Status" employment with Ada County, and granted permanent status as a "classified employee", effective August 1, 1998, pursuant to Ada County Code, § 1-7E-2A & B.

9. That Gibson was given an increase in wages, through the Sheriff's Pay Plan, from $1,350.00 monthly to $1,500.00 monthly.

10. That in January 1998, Gibson was *approved* for transfer and promotion, and was officially transferred to Jail Technician II, effective October 16, 1998.

11. That pursuant to said transfer and promotion, Gibson was given an increase in wages, pursuant to the Sheriff's Pay Plan, from $1,500.00 to $1,575.00 monthly (but incorrectly entered as $1,550.00 monthly), and Ada County Payroll Department erroneously erred by entry of her pay status based on "½ month as Police Records Clerk and ½ month as Jail Technician."

12. That Gibson was to have received her promotional five percent (5%) increase to $1,575.00 monthly, for service as a Jail Technician II, required by Ada County Code, § 1-7C-5A; however, due to said administrative record-keeping errors, she was erroneously paid $1,550.00.

13. That Gibson's *employment* was created, governed and *protected* by various provisions of State, County and Federal laws, including the Ada County Code, County Personnel System, § 1-7-1 through § 1-7L-10, the *Idaho Public Employees Protection Act*, § 6-2101 *et seq.*, Idaho Code, the provisions of the Federal *Fair Labor Standards Act* of 1938, (FLSA), as amended, Title 29 U.S.C., § 201 *et seq.*, and also protected by the Ada County Sheriff's Office Policy Manual.

14. That all compensation earned by Gibson as an employee of Ada County, was *controlled* by various laws and provisions, including Chapter 4.00, Ada County Sheriff's

Office Policy Manual; Ada County Code, § 1-7C-1 *et seq.*; the *Idaho Public Employees Protection Act*, § 6-2101 *et seq.*, Idaho Code, and *regulated* by the terms, conditions and provisions of the *Fair Labor Standards* Act (FLSA), Title 29 U.S.C., § 201 *et seq.*

15. That pursuant to the mandatory provisions of FLSA, §203, § 206 and § 207, Gibson was deemed to be an "hourly" wage-rate employee, contrary to any implied fixed monthly "salary" classifications, as may be identified on any "pay vouchers", "claim forms", or Employee Classification/Pay Schedules of Ada County.

16. That on December 23, 1997, while Gibson was employed at the BSU Substation of the Ada County Sheriff's Office, the Legal Advisor to the Ada County Sheriff, confirmed the ineligibility of the "white shirt" staff members of the Sheriff's Office to the FLSA "7k exemption" as a means of compensating those employees, as such staff members were not considered "law enforcement" personnel under the provisions of the Federal enactment (FLSA). That said Gibson was a "white shirt" staff member.

17. That Ada County, its Ada County Payroll Department, and the Ada County Sheriff's Office, had no basis to utilize the "7k-exemption" (FLSA, § 207 (k)) in the determination and disbursement of wages for overtime hours worked by Gibson while employed with Ada County, as so regulated and prohibited by Title 29, Part 553 of the Code of Federal Regulations, § 553.211 and § 553.212.

18. That in late October 1998, Ada County Payroll Department personnel did create further administrative errors in Gibson's classifications and wages, in violation of not only

the "7k exemption", but also the record-keeping requirements of the *Fair Labor Standards Act*, § 211 (c), by entry of erroneous records with the statement: "pay ½ month as Police Records Clerk and ½ month as Jail Technician." That said entry and "administrative error" was characteristic of Ada County's "two-rate" system of payment (sometimes referred to as a "mixed paycheck" which did effectively cause Gibson's "mistaken receipt of money", as hereafter alleged).

19. That on April 22, 1998, the Ada County Board of Commissioners requested employees, including Gibson, to participate in the County's Direct Deposit Program, where the County would directly deposit all monthly pay into the employee's bank account, and stated: "Your monthly pay will automatically be deposited into a checking or savings account of your choice *without any action by you*."

20. That Gibson executed the Automatic Paycheck Deposit Authorization form on May 6, 1998, and authorized Ada County to make direct deposits, and "*initiate, if necessary, debit entries and adjustments for any credit entries in error to my account indicated above*".

21. That after November 1, 1998 and through July 19, 1999, the Ada County Payroll Department did perpetuate continuing violations of the *Fair Labor Standards Act*, § 211 (c), by mistakenly calculating the pay raises and overtime wages, with the mixed pay and erroneous entries, the combined effect of which caused overpayment in the direct deposit to the joint account of Gibson and her husband, for a period of eight (8) consecutive months. That during this period of employment, Gibson was fully *classified as a permanent status employee*, had vested rights under such tenured status, and was to receive all entitlements, benefits, rights and

protection under the *Fair Labor Standards* Act (FLSA), 29 U.S.C § 201 *et seq.*, as announced in the provisions in the Ada County Code, County Personnel System, § 1-7-1 through § 1-7L-10, and the *Idaho Public Employees Protection Act*, Idaho Code, § 6-2101 *et seq.*

22. That from January 1999, through June 30, 1999, Gibson worked 281 hours overtime. These overtime hours, however, were calculated by Ada County pursuant to misapplication of the FLSA "7k exemption", identifying Gibson inappropriately as "law enforcement" personnel. That of those accrued overtime hours, 128 hours was taken as "cash compensation", and 153 hours was held as compensatory time" reserve for future use and discretion. That under the federal *Fair Labor Standards Act* (FLSA), 29 U.S.C. § 207 (k) and the *Code of Federal Regulations*, Title 29, § 553.230, an employee actually begins to accrue overtime compensation once the sum of 171 hours is worked within a twenty-eight (28) day period.

23. That from January 1, 1999 through June 30, 1999, Gibson worked beyond her scheduled regular shifts, and did accrue said 281 hours of overtime but did not challenge the inaccuracies of the County Payroll Department computation of said wages, salary and overtime accruals, as Gibson was before told all errors would be corrected by Payroll, and if she, as other employees, wanted to receive a paycheck, the employee was required to sign the pay voucher (at times referred to as a claim form), even though it was incorrect. Gibson does allege, and by virtue of law, does aver, that the issue of employment rights under the *Fair Labor Standard Act* cannot be abridged or ever waived; that the *Act* compels the employer (solely) to make, keep and preserve accurate employee wage records; that the employer cannot transfer or attempt to transfer any

responsibility under the *Act* to the employee; that any failure of the employer to comply with the *Act* will be at the employer's own peril, and the employer is subject to all ramifications and sanctions. That all said administrative errors of Ada County do constitute violations of the *Fair Labor Standards Act*, § 211 (c), as set forth above.

24. That from October 16, 1998 through July 20, 1999, Gibson did work a total of 112 scheduled regular shifts (12 hours each), and during each of those shifts, was required to report to her workstation (Jail Facility) fifteen (15) minutes prior to start of each such work shift, for a mandatory briefing; that Gibson has never been compensated for any of those briefings as required to be paid under the provisions of FLSA. That Gibson does allege, and by virtue of law, does aver, that said failure to compensate Gibson for each of those said mandatory fifteen (15) minute briefing periods constitutes a violation of the *Fair Labor Standards Act* for each of the 112 work shifts.

25. That on July 20, 1999, pursuant to order from Sheriff Killeen, Detective Arville Glenn met Detective Scott Johnson to discuss the administrative errors discovered in direct deposits to Gibson's joint account, as discovered by Kelli Bolicek, Budget Director at the Sheriff's Office, on July 19, 1999. That on July 19, 1999, Merrily Wilfong, Payroll Technician within the Ada County Payroll Department, sent Kelli Bolicek a detailed accounting of nine (9) Sheriff's Office employees who then were believed to be among those employees shorted pay from October 1998, through June 1999. That Gibson was one of those nine employees Payroll thought was actually owed back pay for overtime wages. That Ada County determined their own Payroll Department had created and perpetuated an administrative error as to Gibson's wage

and benefit records with a result and to the effect the County was disbursing overpayments to Gibson's bank account, through the Ada County's direct deposit program. That said disbursements were causing a mistaken receipt of funds into said joint account, all being the result of the County's error and resulting violations of the *Fair Labor Standards Act* (FLSA), 29 U.S.C. § 211 (c).

26. That on July 20, 1999, said Glenn telephoned Gibson, then on medical leave recovering from back surgery, and requested she come to the Sheriff's Office. Gibson met Glenn at 3:00 p.m., believing it was a "special duty" work assignment needed to be addressed when she returned to work after recovery from surgery.

27. That said Glenn and a participating Detective, Scott Johnson, undertook interrogations of Gibson, constructively designed, orchestrated and conducted to intimidate and to confrontationally threaten said Gibson, knowing Gibson was protected from any such act in signing the pay voucher, as she was required to sign it by Ada County Payroll Department, and the error was created and perpetuated in violation of the record-keeping requirements of § 211 (c) of the *Fair Labor Standards Act*; that said Ada County Sheriff's Office agents were conducting retaliatory and discriminatory action against a protected employee, and said "interrogations" and "investigation" was a proceeding under and related to the substance protected by the *Act*.

28. That Ada County Sheriff, Vaughn Killeen, persisted in his endeavor to thereupon accuse Gibson of some element of misconduct upon the discovery of said overpayments, and was the official of Ada County who did instruct these two detectives to sequester and interrogate said Gibson on July 20,

1999, and under his orders, said detectives did accuse Gibson of unlawful activities, threatened her with felony criminal charges, threatened to maliciously prosecute her, threatened her with jail time, called her a thief and a liar, and placed her on administrative leave and suspended her with pay. That said Sheriff blamed Gibson for what happened and tried to transfer the consequential effects of those FLSA record-keeping responsibilities and violations to said Gibson, and attempted to use that unlawful transfer as his cause to accuse Gibson of wrongdoing, and claimed her violations of County Policy, and unlawful acts, did discriminate against her, retaliate and then wrongfully terminate her, solely because of the erroneous wage and record-keeping process in effect with the Ada County Payroll Department and its Sheriff's Office. That such sequence of events resulted in an exploitation of Gibson's employment protection and her employment rights, and did cause a discriminatory retaliation against Gibson, a violation of said FLSA enactment, 29 U.S.C. § 215 (a)(3).

29. That in fact, the underlying cause of this administrative error was determined to be the flawed accounting process and use of a pay voucher, kept in effect by the County until approximately January 10, 2002, when the events of such non-compliance were made a major issue and disclosure of concern within Ada County, and administrative efforts were taken to find a way to come into "some level of" compliance with the Federal mandates of FLSA.

30. That these interrogations of Gibson caused detrimental physical and psychological injury to her as a result of the actions of these County agents acting, then under orders and direction of the Ada County Sheriff; That these detrimental effects caused Gibson to remain unemployed and in such unemployable state for over one (1) year.

31. That Gibson did at such relevant times, have certain rights and protection afforded to her as an employee of the Sheriff's Office § 7.05, Ada County Sheriff's Office Policy Manual, when a member becomes subject to any internal investigation; that Subparagraph 7 of § 7.05, specifically states, "No member will be subjected to punitive action because of the exercise of privileges granted under this order or the exercise of any rights under the U.S. Constitution, Idaho Constitution, or applicable law."

32. That Gibson does allege, and by virtue of law, does aver, these interrogation proceedings were a violation of the Ada County Sheriff's Office Policy Manual and Ada County Code, and a violation of the Fair *Labor Standards Act*, § 215 (a) (3), as Gibson was subjected to threats of punitive action in the form of words or statements such as "criminal court", "extortion", "grand theft", "felony record", "fine", "restitution", and "felon", all of which statements were in violation of the Ada County Sheriff's Office Policy Manual, § 7.05, and in violation of her freedom, property rights and interests, and her constitutional and statutory protections.

33. That during said interrogations on July 20, 1999, Gibson did, on several occasions, articulate to the Detectives she had found previous record-keeping errors in her "pay vouchers'; that she had contacted Karen Bond about those "pay voucher" errors after being instructed to do so by her Supervisor, Sergeant Gary Rouse; that Karen Bond had stated to her, "if she wanted to get paid anything, she had to sign the voucher, even if it was incorrect"; that after numerous attempts with no success at having Ada County Payroll Department issue a correct "pay voucher"; that Gibson, as all other employees, succumbed to living with incorrect "pay vouchers", and never made further attempts to reconcile, challenge, read

or verify the "pay vouchers", as they were considered to be incorrect as a matter of accepted County practice.

34. That Gibson did further articulate, while being interrogated and held responsible for the administrative error created and perpetuated by Ada County Payroll Department personnel; that it was not her responsibility or under her job function as a Jail Technician, to keep payroll records or to assure completeness and accuracy of any payroll, wage or benefit records, and such vouchers were historically known to be and accepted as being routinely in error.

35. That Gibson did further attempt, in good faith, to resolve the overpayment mistake during that interrogation affront on July 20th, as she proposed several times to said Detectives, simply to take all of her accrued overtime, compensatory time and vacation time to repay (or offset) the overpayment caused from the County's administrative error.

36. That following this interrogation process, on July 28, 1999, Gibson's counsel received a phone call from Mr. R. Monte MacConnell, Sheriff's Legal Advisor, who stated the Sheriff specifically wanted Gibson terminated, and if Gibson did not resign from the Sheriff's Office, she would be processed with felony charges for grand theft and fired forthwith.

37. That Gibson refused to act upon that threat and proposed resolution of resignation, and exercised her right to maintain her tenured employment and preserve her vested property rights in accordance with the protections afforded her.

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38. That on July 23, 1999, Ada County prepared a Notice of Personnel Action, wherein it was stated, "Effective 7/23/99", "Paid Administrative Leave", and "Delivered Notice of Intent to Terminate".

39. That on July 28, 1999, Gibson formally declined to relinquish her employment with Ada County under the coercive attempt and extortious threats to resign. That Sheriff Killeen then authorized and signed the "Special Investigations Disposition" form on July 28, 1999, wherein he did specificaliy "Initiate Termination Proceeding".

40. That as a consequence of the extortion attempts, capricious and malicious action, threats and false statements against Gibson to coerce her to surrender her employment, Gibson was required to seek medical attention with Dr. Stephen E. Spencer, who diagnosed her initially as having acute depression and situational distress from the trauma imposed upon her.

41. That Sheriff Killeen did acknowledge, in his Notice of Intent to Impose Discipline, dated August 2, 1999, that Gibson had signed eight (8) Ada County Pay Claim forms (vouchers) prepared by the Ada County Payroll Department, which had in fact incorrectly stated the employee salary, and did attempt, by said Notice of Intent to Impose Discipline upon Gibson, to transfer, promulgate and otherwise unreasonably and unlawfully reassign the record-keeping requirements and responsibilities to Gibson, all being a violation of the *Fair Labor Standards Act*, § 211 (c) and a clear admission thereof.

42. That on August 3, 1999, being one (1) day after serving Gibson Notice of Intent to Discipline, and seven (7)

days after Gibson refused to resign her Ada County employment, said Sheriff Killeen did authorize Detective Arville Glenn to send his "Case Status Report" to the Ada County Prosecutor's Office, therein and thereby falsely accusing Gibson of the alleged act of felony grand theft, an alleged violation of Idaho Code, § 18-2403, and did forward that report for the sole purpose of prosecution.

43. That on August 5, 1999, pursuant to the Sheriff's intent to request Gibson participation in an "informal" meeting with Ada County agents, Gibson's physician, Dr. Spencer, notified the Sheriff to the effect "her condition has not improved to the point where she can participate in a hearing until further notice" due to her medical trauma and diagnosed condition.

44. That on August 6, 1999, Gibson denied the allegations contained in Sheriff Killeen's Notice of Intent to Impose Discipline, pursuant to Ada County Code § 1-7G-3C, and did appeal the Sheriff's intention to terminate her employment, in accordance with the provisions in the Ada County Personnel System, Ada County Code § 1-7G-1 through § 1-7G-3, instituting what Gibson thought was a proceeding under the Idaho *Administrative Procedures Act*, and related to the *Fair Labor Standards Act*.

45. That as a result thereof, and on August 9, 1999, Greg H. Bower, Ada County Prosecutor, sent to Mr. John Christensen, Chief Criminal Prosecutor in Canyon County, Idaho, authorization "to file charges (against Gibson) in this case...", and therein stated "I will have you appointed as special prosecutor". That said communication was contrary to Idaho law and the statute governing such proceedings, and was designed solely to seek malicious prosecution, as such

conduct was not authorized by Idaho Code §31-2603 (a); that such letter of "authorization" was undertaken for the benefit of the Sheriff, designed to carry forward the threat of criminal charges to frighten said Gibson, constituting thereby an arbitrary, discriminatory and unlawful behavior, pursued solely for malicious and vengeful purposes.

46. That on August 11, 1999, the Sheriff's Legal Advisor submitted Gibson's July paycheck and claim form (pay voucher), which continued to show incorrect salary references of $1,550.00.

47. That on August 20, 1999, said Chief Criminal Deputy Canyon County Prosecutor, John Christensen, determined, as a matter of law, criminal charges against Gibson were "inappropriate", that notwithstanding said disposition, Ada County Prosecuting Attorney exercised further misconduct by submitting a letter of August 25, 1999, to the Sheriff's Budget Director, for entry of investigatory records, reports, and information of such classified nature, into Gibson's personnel file.

48. That on August 20, 1999, Dr. Spencer confirmed the diagnoses of acute depression, anxiety and insomnia from the result of the traumatic effects of the treatment Gibson had suffered by the wrongful actions of Ada County agents, and that diagnosis was made known to said Sheriff and his agents.

49. That pursuant to the inappropriate "informal" meeting again scheduled by the Sheriff's Legal Advisor for Gibson to meet with the Sheriff on August 23, 1999, at 3:00 p.m., Dr. Spencer was again requested to send another letter (August 20, 1999) stating "There is no way that she can adequately represent herself in the present emotional state."

50. That notwithstanding the medical diagnosis and state of emotional trauma caused by the unlawful conduct of Ada County officials, the County Sheriff Legal Advisor, on August 23, 1999, requested Gibson then accept Administrative Leave Without Pay; that Gibson's counsel declined that request, but pursuant to authority from Gibson and her husband, it was presented that if, Ada County would continue medical benefits coverage, during all periods of any administrative leave (needed for the acute depression, insomnia and anxiety attacks that had resulted from this psychological injury from the County's misconduct), Gibson would agree to accept status of Leave Without Pay, but only upon the continuation of all her medical benefits. In confirmation of such a proposal, Gibson caused a letter to be sent to confirm precisely what she would agree to, and identified the only status of non-pay she would accept, regarding Administrative Leave, in her effort to demonstrate her good faith duty of cooperation in her contractual employment relationship, and during all due process administrative proceedings and exercise of all protection, rights and remedies; that notwithstanding said letter and contrary to the Ad County employee policy, the Sheriff's Legal Advisor, acting on behalf of the Sheriff, disregarded the specific basis of acceptance and change in status, and placed Gibson on Administrative Leave Without Pay, and forthwith canceled all of her medical benefits. That such wrongful event was memorialized by letter of August 25, 1999, violating the policy, County Code, and express condition set forth by Gibson, constituting a violation of Ada County Code, § 1-7G-3, which therein has set forth the specific conditions upon which an employee can be placed on Administrative Leave Without Pay.

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51. That on August 25, 1999, Ada County personnel prepared a further Notice of Personnel Action, again showing Gibson's incorrect wages, and further stating "Employee to go on Administrative Leave WITHOUT Pay Effective 8/25/99 in lieu of pending investigation and decision following informal hearing with Sheriff Killeen."

52. That as a consequence of the extreme harmful and traumatic effects to the physical and emotional health of Gibson, caused directly by the actions of the Ada County Sheriff's Office and the Ada County Prosecutor's Office, Dr. Spencer prescribed further medications because of her inability to safely drive a vehicle, and consequently, her husband (and others) had to supervise most home activities, and Gibson had a power of attorney be prepared to appoint her husband to act in her stead, as Gibson was experiencing additional pain, physical and emotional injury.

53. That on September 1, 1999, the County sent a letter, along with what was labeled "Stacy Gibson's last check covering the period ending August 31, 1999." That said claim form (pay voucher) continued to show an incorrect pay rate and reference of $1,550.00.

54. That said act of Ada County to calculate, produce and forward the letter and check stating: "Stacy Gibson's last check covering the period ending August 31, 1999", prior to any hearing on the required element of good cause required by Ada County Code, to address any basis for termination, was a violation of the Ada County Code and further attempt to further violate Gibson's property rights.

55. That said Ada County officials and agents did then conspire, and take action to terminate Gibson's employment

with the Ada County Sheriff's Office, without the basis of any good cause, in violation of Gibson's property rights.

56. That on September 21, 1999, said Ada County, through R. Monte MacConnell, again presented the Sheriff's demand for an informal meeting with Gibson to occur on October 5, 1999, notwithstanding the fact said Killeen and MacConnell knew Gibson was under a physician's care, on medication, had given her power of attorney and her physician had forbidden Gibson to participate in all confrontational meetings due to her trauma and needed medical treatment, until further notice.

57. That on September 27, 1999, Gibson, through counsel, caused a letter to be sent to said MacConnell, again, asserting Gibson's rights under FLSA, the Ada County Code, applicable County Policy, and requested Ada County then provide a full and complete independent accounting of Gibson's payroll records, as the County's records were found to be froth with administrative accounting errors.

58. That on October 5, 1999, after Gibson had been threatened with malicious prosecution, and wrongfully placed on Administrative Leave Without Pay, the Sheriff regarded her to be a full status employee, and "ordered" Gibson to report to the County Jail Facility, at 1:00 p.m., to be diagnosed by the County Physician, Dr. Charles Steuart. That Gibson did as ordered, and in the company of her husband, did go to the Jail Facility as "ordered", did meet Dr. Steuart for that period of time as required, and was then paraded past other employees in the facility, and was compelled to undergo diagnosis by Dr. Steuart for his medical prognosis and determination of her mental and physical assessment; that Dr. Steuart confirmed the state of trauma as diagnosed by Dr.

Spencer, and informed the County she could not then participate in any confrontation settings.

59. That during that examination with Dr. Steuart, Gibson discovered her 'inbox' in the facility had been removed, and all indicia of her employment had been taken from the facility.

60. That in late October 1999, Gibson and her husband requested Dr. Steuart forward a copy of his diagnosis and prognosis made on October 5, 1999 to Gibson's primary physician, Dr. Stephen E. Spencer for review and for inclusion in her medical file; that Dr. Spencer and his nurse also requested those medical records be forwarded to his office by Dr. Steuart, at the authorization and request of said Gibson.

61. That on October 27, 1999, said MacConnell sent a letter stating he would not produce Dr. Steuart's medical records to Gibson or to Dr. Spencer as requested; that such action of said McConnell did constitute an interference with Dr. Steuart's professional conduct, and create a violation of the *Rule For Licensure To Practice Medicine And Surgery And Osteopathic Medicine And Surgery In Idaho*, IDAPA 22, Title 01, Chapter 01, and as such, a direct act of interference with Gibson's right to receive medical records, relating to her employment, and a direct interference with her rights and privileges associated with her employment.

62. That after said MacConnell refused to transfer Gibson's medical records to Dr. Spencer, said Gibson sent a certified letter to Dr. Steuart on October 29, 1999, requesting Dr. Steuart transfer her medical records to Dr. Spencer, just as he had before requested.

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63. That on November 3, 1999, said MacConnell sent a letter to again confirm Ada County had placed Gibson on "Administrative Leave without pay and without benefits", and refused to produce any medical records; that said MacConnell reiterated they would not send Dr. Spencer a copy of Dr. Steuart's medical notes and records, and then MacConnell undertook his controlling effort to keep Gibson from having any contact with all of her co-workers, including any friends she had at the Sheriff's Office.

64. That on November 8, 1999, Gibson's husband pursuant to his power of attorney, sent a further request to Dr. Steuart, again requesting Dr. Steuart forward copies of Gibson's medical records to her primary physician, Dr. Stephen E. Spencer.

65. That on November 12, 1999, Dr. Spencer sent a letter and again addressed the fact the continued obstructionism by the Ada County Sheriff's Office would perpetuate Gibson's insecurity, isolation, anxiety and depression, and make the situation impossible for her to appear at any informal meeting to discuss the matter in any confrontational setting, just as Dr. Steuart was concerned.

66. That on November 15, 1999, Gibson and her husband requested the assistance of the Idaho State Board of Medicine to direct Dr. Steuart comply and submit a copy of his October 5, 1999 examination records to Dr. Spencer; that said MacConnell advised the Medical Board no records exist.

67. That on December 14, 1999, Sheriff Killeen was again informed Gibson was still under the care and supervision of her physician, her condition had not improved, and the County would not be allowed to engage her in any

confrontational setting, and submitted physician verification of the nature and extent of her injuries in her continuing compliance with Ada County Code, § 1-7I-1F.

68. That on December 16th and 17th, 1999, it was confirmed Gibson was officially under surveillance by Sergeant Scott Johnson, with no lawful or legitimate purpose being served but solely in conjunction with this administrative overpayment error. That these actions of surveillance by Ada County were intended solely to frighten Gibson, as the Sheriff wanted to "encourage" her to resign, as the convenient resolution of their self-imposed dilemma, to avoid further emotional pressure. That such surveillance was designed to influence Gibson while she was still in a state of fragile health, and such conduct did constitute harassment, serving the only purpose to influence her to resign, and to achieve the County's directive to get Gibson to quit her job and avoid further formal disclosure of the administrative errors and poor choices being exercised by the County. That by such conduct, said Johnson violated Idaho Code, § 18-2604, as he intended to intimidate and harass Gibson, knowing Gibson was the subject of poor health, and only could have involvement in a civil proceeding, not any criminal proceeding; that Ada County Code, Sections 1-7A-2A and 1-7A-2B did prohibit such discrimination and harassment of an employee in any such form.

69. That on December 27, 1999, Sheriff Killeen decided to terminate Ms. Gibson, effective immediately.

70. That on January 4, 2000, Gibson denied any commission of any wrongful conduct or willful violation of the Ada County Personnel Code, or the Ada County Sheriff's Office Policy Manual, or any Idaho Code provision as contained within the statutes of the State of Idaho; that

Gibson appealed the decision of Sheriff Killeen's expressed intention to terminate her employment with the Ada County Sheriff's Office, and did seek appeal pursuant to the provisions of Ada County Code, § 1-7G-3L, as the appeal vehicle made available to her, and requested a hearing pursuant to all provisions contained in the Ada County Code.

71. That on January 4, 2000, Gibson gave notice pursuant to Idaho Code, § 45-606, § 45-607, § 45-609, and § 45-610, to Sheriff Killeen as to the wages, salary, overtime, and holiday pay she was entitled to be paid, as of the date of that notice. Within that notice, Gibson did assert her FLSA rights again, the violation thereof, and did notify Sheriff Killeen (again) her check for August 1999 was in error.

72. That on January 7, 2000, Ms. Kelli Ketlinski, acting as counsel for Ada County, sent correspondence, stating, in part, "If Ms. Gibson received a payroll warrant in either July or August 1999, which she believed did not match that which was due, she had an obligation and opportunity to bring that to her supervisor's attention at the time, and for five days following the date, she signed her voucher stating that the amount was correct." That Ada County refused to compensate Gibson for any of the wages, salary, overtime and holiday pay due her.

73. That in January 2000, Gibson, through Interrogatories and Request for Production of Documents, attempted to gain relevant and exculpatory evidence relating to her wrongful termination, and sought evidence relating to the wage and salary record-keeping, and how the Ada County Sheriff's Office and the Ada County Payroll Department had created and perpetuated their administrative errors that led to the issue of the erroneous overpayments.

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74. That on January 13, 2000, G. Lance Salladay, acting as an employee of Ada County, and in his salaried capacity as Ada County Personnel Hearing Officer, prevented Gibson any access to such information.

75. That said Ada County and its Sheriff's Office did continue in its efforts, and without any lawful basis or authority in their attempt to transfer unto Gibson, through the use of the "pay voucher" and "claim form", the employer's duty and statutory responsibility to keep and maintain accurate wage and salary records as their sole duty under 29 U.S.C., § 211 (c), and such ongoing action and conduct of said County officials, from July 20, 1999, throughout all durations of Gibson's right of employment, constitute violations of said federal statute, by virtue of Title 29, U.S.C., § 211 (c), and said actions, as alleged hereinabove, constitute repeated and independent violations of the *Fair Labor Standards Act*, § 215 (a) (3).

76. That Dr. Charles D. Steuart did notify the Idaho State Board of Medicine thereafter that he had destroyed all medical records from the examination he conducted on October 5, 1999, thereby committing a violation of the *Rule For Licensure To Practice Medicine And Surgery And Osteopathic Medicine And Surgery In Idaho*, IDAPA 22, Title 01, Chapter 01, being done as instructed by Ada County officials, constituting further violations of the *Fair Labor Standards Act*, § 215 (a) (3).

77. That on January 28, 2000, said MacConnell thereafter wrote the Idaho State Board of Medicine his letter, seeking to mitigate the violation of the Medical Rules, claiming, "there was no written product of the meeting" in an effort to protect Dr. Steuart from his own sincere and genuine honesty. That

said MacConnell further attempted to dissuade the Board of Medicine from investigating Gibson's complaint by his further remark "Her allegations are groundless and are for the most part figments of Mr. Gibson's over-active imagination", notwithstanding the fact the medical records had been confirmed destroyed by the physician who created them.

78. That on February 3, 2000, Dr. Stephen E. Spencer sent his letter to the Idaho State Board of Medicine, describing ongoing distortions of MacConnell as made in his letter of January 28, 2000, and did again address the requests he had made for copies of Dr. Steuart's medical records.

79. That on February 15, 2000, the County Hearing Officer, G. Lance Salladay, affirmed the termination of Gibson's employment with the Ada County Sheriff's Office.

80. That on February 18, 2000, Gibson did once again cause notice to Sheriff Killeen, requesting all wages, and pay due and owing, including "those periods of earnings which she was entitled due to the County's breach of agreement", be processed and forwarded, by Thursday, February 24, 2000.

81. That Gibson secured the services of Larry Stewart, Licensed Public Accountant, in an effort to again review all wage, salary and pay records made available, and confirmed record-keeping discrepancies in all aspects of wages, salaries, benefits and compensation, from what was reported on the W-2 Forms, compared to pay vouchers, records and pay documents.

82. That on February 1, 2000, the Ada County Payroll Department correcting one of their errors concerning the erroneous salary of $1,550.00, and did thereafter indicate the correct salary was to have been $1,575.00. That on March 1,

2000, Sheriff Killeen authorized Ada County Payroll Department to pay Gibson $25.00 for each of those months the County was required to pay her that promotional pay, pursuant to Ada County Code, § 1-7C-5A.

83. That on February 15, 2000, the Ada County Payroll Department created a erroneous "pay voucher" and Notice of Personnel Action, therein detailing the following remarks:

> SEPARATION: Involuntary Resignation Effective 2/15/00
>
> 117.8 – Comp Hours Due
> 168. Vacation Hours Due
> -0- Overtime Hours Due
> -0- Holiday Hours Due

That this Notice and "pay voucher" was authorized by Sheriff Killeen on March 1, 2000, and Gibson was required to again dispute the Ada County Payroll Department's record-keeping efforts, as the above-referenced comp hours, vacation hours, overtime hours, and holiday hours and described event of separation, were in all respects in error. That each, every and all of these record-keeping errors constitute a violation of the *Fair Labor Standards Act*, § 211 (c), as a matter of law.

84. That as further indication of record-keeping errors, Gibson was mailed a "Cobra Notification", dated March 2, 2000, therein notifying Gibson to the effect her health coverage was now ending, due to "Termination of the employee's employment (other than gross misconduct) or reduction of hours worked which renders the employee ineligible for coverage." That such document further stated Gibson's "coverage will terminate on February 29, 2000"; that Gibson

was specifically told beginning August 25, 1999, that her benefits had been cancelled, and she had no benefits coverage after September 1999, and her efforts to utilize her medical benefits after September 1999 were declined.

85. That Ada County, as an FLSA employer, has subsequently admitted it has been out of compliance with the mandatory obligations to comply with the provisions and conditions of FLSA, as declared February 12, 2001 by Theodore E. Argyle, Ada County Chief Deputy Attorney, Civil Division, to Ada County Board of Commissioners, and such non-compliance spanned the entire duration of Gibson's employment, and was the proximate and sole cause of the deposits of overpayments into Gibson's joint checking account.

86. That on August 1, 2001, said MacConnell, in response to a Work Comp claim filed by Gibson, caused a letter to be sent to Mike Roberts, Ada County Risk Manager, wherein MacConnell said Gibson's Work Comp claim was "spurious".

87. That on August 2, 2001, said MacConnell continued his retaliation against Gibson, solely because she asserted her employment rights throughout this ordeal of enduring these ongoing administrative errors and refused to submit her resignation, as he demanded of her.

88. That on January 8, 2002, Sheriff Killeen officially announced pay voucher errors, and prepared a Payroll Update Memorandum for all employees of the Ada County Sheriff's Office, stating "Your normal benefit time (vacation, sick and holiday) and your compensatory time will print out with your check, but it will not be accurate."

89. That Ada County Commissioner, Sharon M. Ullman, officially announced Ada County has not been in compliance with the mandatory provisions and conditions of FLSA, and has issued her sworn statement to that effect.

90. On May 18, 2001, Ada County employees, because of this non-compliance, did attend a Risk Training seminar concerning the *Fair Labor Standards Act*; that it was deemed necessary to educate Ada County officials about FLSA obligations and responsibilities to County employees, as an FLSA employer. That during that seminar, it was disclosed Ada County had been *out-of-compliance* with the applicable Federal law, and each County Department needed to initiate major changes in the ~~method~~ and means by which the County would handle, process, and maintain employees' wage records, and discharge its record keeping responsibilities, and maintain records for *correct disbursements*. That official County Records indicate the Board of County Commissioners made such strident changes, effective not later than January 10, 2002. That during that seminar, it was specifically emphasized no defense was available to them for an FLSA violation, and stressed need ~~for~~ all Departments to come into compliance with the *Fair Labor Standards Act*.

91. That on October 17, 2001, Jesse Betancourt, Wage and Hour Investigator, U.S. Department of Labor, held a final conference with the Ada County Juvenile Court Services concerning his ongoing investigation about that Department's violations of § 7 (k) and § 211 of the *Fair Labor Standards Act* as a result of their employee exercising his protected rights. That said investigation did conclude Ada County had been and was in violation of the mandatory record-keeping and overtime payment provisions under FLSA.

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COUNT I

CLAIM FOR WAGES DUE GIBSON PRIOR TO JULY 20, 1999

92. Gibson does re-allege each of the General Allegations set forth and contained in Paragraphs 1 through 91 above, inclusive, as though said allegations were set forth and contained in full herein.

93. That effective July 1, 1998, and at all times thereafter relevant to this Claim for wages, to July 20, 1999, Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C., § 201 *et seq.*, as carried into the provisions and enforced under the Ada County Code, County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code.

94. That as early as December 23, 1997, the Ada County Sheriff's Office was aware it could not, pursuant to federal law, pay overtime compensation to Ada County Sheriff's Office civilian personnel (non "law enforcement" personnel or "white shirts") using the "*7k exemption*" under FLSA, and to do so was a wage pay error.

95. That since Gibson's promotional transfer to the Ada County Jail Facility on October 16, 1998, Ada County Payroll Department, concerning the payment of wages to Sheriff's Office employees referred to as "white shirts", has misapplied the FLSA "*7k exemption*" to those civilian employees of the Ada County Jail Facility; that said "*7k exemption*" was available only for paying overtime compensation due "law

enforcement" personnel, affirmatively defined to mean "employees who are empowered by state or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; such employees only who have the power to arrest; and who have undergone training in law enforcement". That pursuant to the United States *Code of Federal Regulations*, Title 29, § 553.211 through § 553.212, at no time did Gibson meet this statutory criteria as "law enforcement" personnel, well known to said employer, as she did not have the power to arrest (she was a non-commissioned deputy, she was not a candidate for the Post Academy, nor was she eligible to receive retirement benefits pursuant to "Rule 80", under the Public Employees Retirement System of Idaho (PERSI). That "Rule 80" was available only to "law enforcement" personnel. That at all relevant times, Ada County was required to compensate Gibson's overtime under § 207 (a)(1), FLSA, not § 207 (k); that § 207 (a) (1) requires all work time in excess of forty (40) hours per week to be compensated "at a rate not less than one and one-half times the regular rate at which an employee is employed." That Gibson does allege, and as a matter of law, such action was a violation of the *Fair Labor Standards Act*, § 215 (2), as it is "unlawful for any person to violate any of the provisions of §206 or § 207..."

96. That Gibson is entitled to receive all overtime compensation due her from October 16, 1998, through July 20, 1999, as a result of this misapplication of the "*7k exemption*" to her overtime compensation; that Gibson has not received her compensation therefore, and is yet to be compensated under § 207 (a)(1), not § 207 (k), for all work time in excess of forty (40) hours per week "at a rate not less than one and one-half times the regular rate at which an employee is employed."

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97. That Gibson is entitled to be paid for each of the 112 required reporting periods of minutes each prior to the start of each of her regular work shifts, utilized by her employer for jail briefing; that Gibson under the supervision, direction and control of the County at those times and on the employer's premises as directed. This claim exists as a result of the misapplication of the FLSA "*7k exemption*" used wrongfully to calculate overtime wages; that Gibson has not received compensation therefore, and is yet entitled to be compensated, under § 207 (a)(1), not § 207 (k).

98. That Gibson does claim compensation due her in accordance with the reconstructed monthly calendars for October 1998, through July 1999, for which Gibson hs determined her straight (regular) time and her overtime compensation from October 16, 1998 through July 20, 1999, to be in the following amounts:

Time Period	Regular Time Due (Jail Briefing)	Accumulated Overtime Due
10/18/98-10/24/98	0.75 Hours	0 Hours
10/25/98-10/31/98	0 Hour	9 Hours
11/1/98-11/7/98	0.75 Hours	0 Hours
11/8/98-11/14/98	0.75 Hours	0 Hours
11/15/98-11/21/98	0.50 Hours	0 Hours
11/22/98-11/28/98	0.75 Hours	0 Hours
11/29/98-12/5/98	0 Hours	9 Hours
12/6/98-12/12/98	0 Hours	9 Hours
12/13/98-12/19/98	0.25 Hours	0 Hours
12/20/98-12/26/98	0.75 Hours	0 Hours
12/26/98-1/2/99	0 Hours	9 Hours
1/3/99-1/9/99	0 Hours	9 Hours
1/10/99-1/16/99	0 Hours	9 Hours

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1/17/99-1/23/99	0 Hours	9 Hours
1/24/99-1/30/99	0.75 Hours	0 Hours
1/31/99-2/6/99	0.75 Hours	0 Hours
2/7/99-2/13/99	0.50 Hours	0 Hours
2/14/99-2/20/99	0.75 Hours	0 Hours
2/21/99-2/27/99	0 Hours	9 Hours
2/28/99-3/6/99	0.25 Hours	0 Hours
3/7/99-3/13/99	0 Hours	0 Hours
3/14/99-3/20/99	0 Hours	9 Hours
3/21/99-3/27/99	0.75 Hours	0 Hours
3/28/99-4/3/99	0.75 Hours	0 Hours
4/4/99-4/10/99	0.75 Hours	0 Hours
4/11/99-4/17/99	0.25 Hours	0 Hours
4/18/99-4/24/99	0.75 Hours	0 Hours
4/25/99-5/1/99	0.75 Hours	0 Hours
5/2/99-5/8/99	0 Hours	9 Hours
5/9/99-5/15/99	0 Hours	9 Hours
5/16/99-5/22/99	0.75 Hours	0 Hours
5/23/99-5/29/99	0.25 Hours	0 Hours
5/30/99-6/5/99	0.25 Hours	0 Hours
6/6/99-6/12/99	0.75 Hours	0 Hours
6/13/99-6/19/99	0.75 Hours	0 Hours
6/20/99-6/26/99	0 Hours	9 Hours
6/27/99-7/3/99	0 Hours	9 Hours
7/4/99-7/10/99	0 Hours	9 Hours
Total	**14.25 Hours** (Regular Hourly Rate)	**126 Hours** (1 ½ Times Regular Rate)

99. That Gibson is entitled to be paid for a specific twelve (12) hour overtime shift performed at the BSU Substation on June 28, 1999, for which Gibson has not received compensation therefore, and is yet to be compensated pursuant

to the provisions of FLSA and the provisions of the Ada County Sheriff's Office Policy Manual, § 4.01.

100. That Gibson is entitled to be paid for another specific period of twelve (12) hours of regular pay for the July 4, 1999 Holiday, for which Gibson has not received compensation therefore, and is yet to be compensated pursuant to the provisions of FLSA and the provisions of the Ada County Sheriff's Office Policy Manual, § 4.01.

COUNT II

CLAIM FOR WAGES DUE GIBSON FOR OVERTIME PAY FOR JULY 20, 1999

101. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 100 above, inclusive, as though said allegations were set forth and contained in full herein.

102. That all times relevant to this claim for compensable time through her employment, said Gibson, notwithstanding her medical leave status was summoned to report to the Ada County Sheriff's Office on July 20, 1999; that Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C. § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code, all of which were in effect when she was ordered to report to the Sheriff's Office on July 20, 1999.

103. That Gibson is entitled to compensation for that period of time she was under interrogation on July 20, 1999, when summoned to the Sheriff's Office while on medical leave, in the amount of two and one-half (2 ½) hours of overtime pay for which Gibson has not received compensation therefore, and is yet entitled to be compensated overtime pursuant to the provisions of FLSA and the Ada County Sheriff's Office Policy Manual, § 4.01 (1), (3) and § 7.05 (2).

COUNT III

CLAIM FOR WAGES DUE GIBSON FROM AUGUST 24, 1999 THROUGH SEPTEMBER 30, 1999

104. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 103 above, inclusive, as though said allegations were set forth and contained in full herein.

105. That at all times relevant to this claim for compensable time through her salaried employment for the period of August 24, 1998, through September 30, 1999, said Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C., § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code.

106. That on August 24, 1999, the Ada County Sheriff's Legal Advisor, R. Monte MacConnell, acting for and on behalf of the Sheriff, did place Gibson on declared Administrative

Leave, Without Pay, and canceled Gibson's medical benefits forthwith, in violation of Ada County Code, § 1-7G-3, which provisions therein were uniquely specific to when an employee can be placed on unpaid Leave. That Gibson does allege, as a matter of law, that action was a violation of the *Fair Labor Standards Act*, § 215 (a) (3); that said declarations were unlawful and all affected periods of Gibson's continuous employment and all wages are due and payable during that administrative leave for which Gibson is entitled to Leave with pay.

107. That confirmation of the County's determination of such unpaid Leave was disclosed by letter of August 25, 1999. That Gibson does allege, as a matter of law, this further written confirmation of unlawful declared leave was a further violation of Ada County Code, § 1-7G-3, which provisions therein were uniquely specific as to when an employee can be placed on unpaid Leave. That Gibson does also allege, as a matter of law, this further action by said MacConnell in behalf of Ada County, was a violation of the *Fair Labor Standards Act*, § 215 (a) (3); that said declarations were unlawful and all affected periods of Gibson's wages during that administrative leave must be declared to be Leave with pay.

108. That as a result of said acts and resulting violations and disregard for the expressed concerns regarding the Code on such leave status, Gibson did accrue salary and benefits thereon as a result of said wrongful action, from August 24, 1999 through September 30, 1999, as follows:

Time Period	Wages Due
8/24/99-8/31/99	$ 358.00 ($1,575.00-$25.00-$1,192.00)
9/1/99-9/30/99	$1,575.00

109. That as a result of this wrongful entry of Administrative Leave Without Pay, Gibson ~~is~~ entitled to said wages for which Gibson has not received that compensation due her, and is entitled to be compensated those wages for regular pay and routine overtime and holiday pay, pursuant to the provisions of FLSA.

COUNT IV

CLAIM FOR WAGES DUE GIBSON FROM OCTOBER 1, 1999 THROUGH FEBRUARY 15, 2000

110. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 109 above, inclusive, as though said allegations were set forth and contained in full herein.

111. That at all times relevant to this claim for compensable time through her employment for the period of October 1, 1999, through February 15, 2000, said Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C., § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code.

112. That on August 24, 1999, the Ada County Sheriff's Legal Advisor, R. Monte MacConnell, acting for and on behalf of the Sheriff and Ada County, did place Gibson on declared Administrative Leave, Without Pay, and canceled Gibson's medical benefits forthwith, in violation of Ada County Code, § 1-7G-3, which provision therein was uniquely specific to when

an employee can be placed on unpaid Leave. That Gibson does allege, as a matter of law, this action was also a violation of the *Fair Labor Standards Act*, § 215 (a) (3); that said declarations were unlawful and all affected periods of Gibson's wages during that declared administrative leave must be deemed to be Leave with pay.

113. That confirmation of the County's determination of such unpaid Leave was disclosed by letter of August 25, 1999. That Gibson does allege, as a matter of law, this further written confirmation of unlawful declared leave was a violation of the Ada County Code, § 1-7G-3, which provision therein was uniquely specific to when an employee can be placed on unpaid Leave. That Gibson does also allege, as a matter of law, this further action by said MacConnell, in behalf of Ada County, was a violation of the *Fair Labor Standards Act*, § 215 (a) (3); that said declarations were unlawful and all affected periods of Gibson's wages during that administrative leave must be declared to be Leave with pay.

114. That effective October 1, 1999, Gibson had fully completed her "intradepartmental promotional probation" period as defined by Ada County Code, § 1-7E-1B (2), thereby entitling Gibson to her periodic step-increase in wages, pursuant to the Sheriff's Pay Plan, to $1,700.00.

115. That as a result of said acts and resulting violations and disregard for the expressed concerns of such leave status, Gibson did accrue wages and benefits thereon, from October 1, 1999, through February 15, 2000, as follows:

Time Period	Wages Due
10/1/99-10/31/99	$1,700.00

11/1/99-11/31/99	$1,700.00
12/1/99-12/31/99	$1,700.00
1/1/00-1/31/00	$1,700.00
2/1/00-2/15/00	$ 850.00

116. That as a result of this wrongful entry of Administrative Leave Without Pay, Gibson is entitled to said wages for which Gibson has not received that compensation due her, and is entitled to be compensated those wages for regular pay and routine overtime and holiday pay, pursuant to the provisions of FLSA, and said leave be declared to be with pay.

COUNT V

CLAIM FOR SICK LEAVE, VACATION PAY, HOLIDAY PAY AND OVERTIME PAY, STEP INCREASES, COST OF LIVING INCREASES, MEDICAL INSURANCE BENEFITS, FAMILY COVERAGE BENEFITS, LIFE AND DISABILITY INSURANCE, WORKMAN'S COMPENSATION COVERAGE, ALL RETIREMENT BENEFIT FUNDS FOR PERSI AND PEBSCO, TOGETHER WITH TRAINING BENEFITS AND UNPAID BENEFITS FROM JULY 20, 1999 THROUGH FEBRUARY 15, 2000.

117. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 116 above, inclusive, as though said allegations were set forth and contained in full herein.

118. That at all times relevant to this Claim for sick leave, vacation pay, overtime pay, pay increases (step increases), cost of living increases, medical benefits, family coverage benefits,

life and disability insurance, Workman's Compensation coverage, unpaid benefits and all other benefits to which Gibson was entitled to receive for compensable time from July 20, 1999 through February 15, 2000, said Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, with entitlements, benefits and protection afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C. § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code.

119. That all wages and earnings identified in COUNTS I, II, III and IV above, did accrue various classifications of compensation, entitlements, and benefits, in accordance with Gibson's classified status as a permanent employee, including sick leave, vacation pay, additional holiday pay, additional overtime pay, step increases, cost of living increases, continued medical insurance benefits, continued family coverage benefits, continued life and disability insurance, Workman's Compensation coverage, all retirement benefit funds for PERSI (representing 6% of total monthly wages) and PEBSCO (an employee contributory retirement plan), together with available training benefits.

120. That Gibson is entitled to said additional compensation, entitlements and benefits for which Gibson has not received compensation due her, and is entitled to be compensated for the value thereof, as determined upon the facts and merits of this Claim. That Gibson does allege, as a matter of law, this action in denying all such entitlements, benefits and compensation was a violation of the *Fair Labor Standards Act*, § 215 (a) (3), and all benefits, entitlements and compensation must be paid as due her.

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COUNT VI

ALTERNATIVE CAUSE OF ACTION REGARDING GIBSON'S MEDICAL COVERAGE BENEFITS FROM AUGUST 24, 1999 THROUGH FEBRUARY 15, 2000

121. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 120 above, inclusive, as though said allegations were set forth and contained in full herein.

122. That during discussions on August 23, 1999 between the Sheriff's Legal Advisor, R. Monte MacConnell, and counsel for Gibson, said County requested Gibson to accept Administrative Leave Without Pay, and in response thereto Gibson declined that request, but did agree that as long as Ada County would continue Gibson's medical benefits coverage, without interruption, during any period of Administrative Leave, Gibson would cooperate with any investigation and consent to such Leave status. The assurance of continuing benefit coverage was critical to and a material element to Gibson's decision, as her health was in jeopardy as she suffered as the result of the treatment sustained by the Ada County agents and County personnel on July 20, 1999. That Gibson does allege, as a matter of law, this requested action of leave by said County agent was a violation of the *Fair Labor Standards Act*, § 215 (a) (3), and the request was unlawful by virtue of both State, Federal and County law.

123. That Gibson caused a letter to be sent to Ada County to confirm the only basis upon which Gibson would agree to cooperate, in good faith with Ada County, and endure a status of non-pay on Administrative Leave, and requiring assurance of uninterrupted continuation of her medical coverage benefits.

124. That notwithstanding Gibson's cooperation with such an extended offer, the Legal Advisor, R. Monte MacConnell, acting for and on behalf of Ada County and its Sheriff, disregarded, declined and ignored Gibson's letter, and did immediately place Gibson on Administrative Leave Without Pay, and did immediately cancel Gibson's medical coverage benefits entirely, as reflected in the County's letter of August 25, 1999. That Gibson does allege, as a matter of law, this action, by the placement of Gibson upon Administrative Leave Without Pay and the cancellation of her medical benefits, was in violation of any basis upon which Gibson could consider any aspect of Leave, and the action taken by the County did constitute a violation of Ada County Code, § 1-7G-3, which provision therein is uniquely specific when an employee can be placed on unpaid Leave. That Gibson does allege, as a matter of law, this action was also a violation of the *Fair Labor Standards Act*, § 215 (a) (3).

125. That Gibson is entitled to recover all benefits, coverage, costs, damages and losses suffered as a result of the cancellation of the medical benefits coverage, which damages are asserted as an alternative Claim to recovery of compensation identified in COUNT V above.

COUNT VII

CLAIM AGAINST ADA COUNTY FOR THEIR MALICIOUS AND CAPRICIOUS MANNER IN WHICH THEY "ORDERED" GIBSON TO SEE THE COUNTY CONTRACTED PHYSICIAN, STRIPPED HER OF ALL INDICIA OF EMPLOYMENT, AND REQUIRED THE PHYSICIAN TO DESTROY ALL DOCUMENTATION OF HIS DIAGNOSIS AND PROGNOSIS

126. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 125 above, inclusive, as though said allegations were set forth and contained in full herein.

127. On October 5, 1999, Mr. MacConnell contacted Gibson's counsel, told him the Sheriff was now "ordering" Gibson to report to the County Jail Facility, at 1:00 p.m., to be diagnosed by County Physician, Dr. Charles Steuart. Gibson was then at her appointment with Dr. Spencer when said command was received and communicated by her counsel. At 1:00 p.m., Gibson did, while accompanied by her husband, go to the Jail Facility as "ordered", and met Dr. Steuart. Gibson was paraded past other employees in the Jail before Dr. Steuart examined her, at which time Gibson's husband told Dr. Steuart to call Dr. Spencer to confirm what had already been diagnosed. Dr. Steuart said he would not do that, and underwent his own diagnosis, and generated notes addressing his diagnosis and prognosis of Gibson. That Gibson does allege, as a matter of law, this form of action was a violation of the *Fair Labor Standards Act*, § 215 (a) (3).

128. That upon completion of Dr. Steuart's examination, Gibson approached Lieutenant Dale Woodcook, then standing in the hallway, and requested she be allowed to remove personal property from her 'inbox' located in the mailroom. It was discovered Gibson's 'inbox' had been removed, and all indicia of her employment had been removed. That Gibson does allege, as a matter of law, this action of removing her 'inbox', while still an employee, was a violation of the *Fair Labor Standards Act*, § 215 (a) (3).

129. That request was made ~~by~~ Gibson~~,~~ ~~by~~ her husband, by use of his Power of Attorney, by Dr. Spencer's nurse,

Kristin Carle, and by Dr. Spencer for a copy of the medical records; that Ada County refused to deliver a copy of the notes (patient medical records) generated by Dr. Steuart during his medical examination; that Mr. MacConnell thereafter identified his participation in this process of withholding Gibson's medical records by his November 3, 1999 letter to Gibson's counsel. That Ada County continued to violate Gibson's rights and privileges envisioned by IDAPA 22.01.01, and on November 15, 1999, with the assistance of her husband, said Gibson filed a complaint against Dr. Steuart with the Idaho State Board of Medicine. The Board of Medicine confirmed the involvement of Dr. Steuart and Mr. MacConnell concerning the destruction of Gibson's medical records. That Gibson does allege, as a matter of law, this course of action was a violation of the *Fair Labor Standards Act*, § 215 (a) (3).

130. That by this time, Ada County had declared Gibson's termination, without personal presence of Gibson at a hearing; that Ada County knew Gibson had suffered a critical health condition and impairment due to their conduct; the County knew Gibson was under medical care of Dr. Spencer, and could not participate in confrontational proceedings without experiencing relapse; the County knew Gibson had been continuously under doctor's supervision, on medicine and under medical care; that the County knew Gibson had been examined by Dr. Charles Steuart on October 5th, because they claimed she was still employed, yet, all indicia of her employment had been removed from her work environment, and the Notice of Intent to Terminate had been issued July 26th; that Ada County had already attempted to encourage Canyon County to maliciously prosecute Gibson, under the "color of authorization", because Gibson would not resign; that Ada County had in fact formulated Gibson's W-2 wage form for

processing her termination, yet was aware from Dr. Steuart's diagnosis that Gibson could not participate in any pre-termination confrontational setting, and because of that knowledge, directed the destruction of Dr. Steuart's medical documentation; that Gibson does allege, a matter of law, that all of this action was a violation of the *Fair Labor Standards Act*, § 215 (a) (3).

COUNT VIII

CLAIM FOR WAGES DUE GIBSON FOR OVERTIME PAY FOR OCTOBER 5, 1999

131. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 130 above, inclusive, as though said allegations were set forth and contained in full herein.

132. That all times relevant to this claim for compensable time through her employment, said Gibson, notwithstanding her medical leave status, was summoned to report to the Ada County Sheriff's Office Medical Facility on October 5, 1999; that Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C. § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code, and did report to the facility as ordered by Ada County.

133. That Gibson is entitled to compensation for that period of time she was being examined by Dr. Charles Steuart on October 5, 1999, as she was "ordered" to the Sheriff's Office and entitled to pay for two (2) hours of overtime pay

pursuant to the provisions of FLSA and the Ada County Sheriff's Office Policy Manual, § 4.01 (1), (3) and § 7.05 (2).

COUNT IX

CLAIM AGAINST ADA COUNTY FOR REPEATED ATTEMPTS TO ENGAGE A CONFRONTATIONAL MEETING; FAILURE TO SUBMIT NOTICE OF GIBSON'S WORK RELATED INJURY TO THE IDAHO INDUSTRIAL COMMISSION, WITHIN TEN (10) DAYS AFTER OCCURRENCE OF THE INJURY, AND FAILURE TO SUBMIT GIBSON'S WORKER'S COMPENSATION CLAIM AS REPEATEDLY REQUESTED BY GIBSON'S COUNSEL

134. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 133 above, inclusive, as though said allegations were set forth and contained in full herein.

135. That damage was done to Gibson's physical, emotional and mental health as caused by the false, discriminatory, capricious and malicious accusations of Ada County, its Sheriff and his Office officials, and from the contentions and misconduct of their Legal Advisor, R. Monte MacConnell; that Ada County Sheriff, Vaughn Killeen, and said MacConnell continued to engage in repeated attempts of confrontational meetings with Gibson, against the advise of her physician, Dr. Stephen Spencer, and even contrary to the diagnosis of Dr. Steuart; thereby causing additional stress and emotional disruption. That Gibson does allege, as a matter of law, these ongoing actions were violations of the *Fair Labor Standards Act*, § 215 (a) (3).

136. That Gibson did request benefits, and gave notice of intent to seek all available benefits, during repeated phone contact with County benefit personnel, as Gibson needed assistance for the incurred medical expenses being incurred after the July 20, 1999 interrogations. That Gibson spoke to the individuals with the County Personnel Department, and filed her claim form for short-term disability benefits under her medical coverage, and expressed need to have a Work Comp claim filed along with that claim. Said Gibson engaged in several conversations with the personnel, received various statements about what benefits could or would apply, and as they were wanting to identify a "physical accident", Gibson explained it was a medical problem from the emotional trauma from the work environment, occurring on July 20, 1999; that the focus was shifted by Ada County from that Work Comp to medical policy coverage, as they said there was County concern as to an "identifiable accident"; that after shifting focus, it was then determined coverage on the short-term disability benefits applied only to non-work related events, and Gibson again requested a Work Comp claim be filed and reported as a result of the traumatic injuries resulting on July 20, 1999. The objective of Ada County was then focused to avoid any available form of obligation or expense to the County. That all medical needs and resulting expenses were all the result of work environment trauma, and were the proper subject of Workman's Compensation. That Gibson referred to the accident of July 20, 1999, and understood her discussion was to establish her right to and declare her intent to seek benefits; that Gibson was told her right thereto would then be processed, but was told they were not sure what coverage would be provided under the Work Comp policy. Nothing thereafter was forthcoming, so Gibson's counsel thereafter (from July 22, 1999 through December 24, 1999) made several requests to R. Monte MacConnell, Legal Advisor to the Ada

County Sheriff, to undertake the needed effort to submit a Workman's Compensation Claim for Gibson's benefit, as well as to process her claim for short-term disability.

137. That the physical and emotional state of Gibson's situation brought about the need for Gibson's counsel to make repeated attempts to Mr. MacConnell to have the Ada County Sheriff's Office submit this incident to the Idaho Industrial Commission as a Worker's Compensation Claim, yet Ada County failed to file any claim, nor did Ada County give notice of the work related accident, as required by state statute under Idaho Code, § 72-601 *et seq.* That Gibson does allege, as a matter of law, this withheld action was a violation of the *Fair Labor Standards Act*, § 215 (a) (3), and § 72-601 *et seq.*, Idaho Code.

COUNT X

CLAIM AGAINST ADA COUNTY FOR OBSTRUCTING JUSTICE WHEN DETECTIVE ARVILLE GLENN, ACTING IN BEHALF OF ADA COUNTY, FALSELY TESTIFIED BEFORE THE ADA COUNTY HEARING OFFICER ON JANUARY 25, 2000

138. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 137 above, inclusive, as though said allegations were set forth and contained in full herein.

139. That all times relevant to this claim for compensable time through her employment, and notwithstanding Gibson's medical leave status and being placed on forced administrative leave without pay, said Gibson was summoned to report to a hearing with the Ada County Hearing Officer on January 24th

and 25th, 2000, and participate in that hearing process, Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C. § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code.

140. That on July 20, 1999, Detective Arville Glenn, Ada County Sheriff's Office, did directly and falsely accuse Gibson of collaborating or conspiring with another person to cause the administrative payroll error, and then to get overpaid, and then keep Ada County's money, as he told Gibson the following:

> "Well, I just want you to understand that I think what happened was that you developed some plan, whether it was by yourself or if you were doing it with someone else to be ready for this day, to be ready for this day."

141. That thereafter, on January 25, 2000, during said hearing, Detective Glenn testified before the Ada County Personnel Hearing Officer, G. Lance Salladay, and claimed he had not accused Gibson of collaborating with anyone and stated:

> "Did she purposely cause it to be increased? No, I never…

142. That Gibson does allege, as a matter of law, this contradictory statement under oath and recanting such accusations and earlier conduct, was a continuing violation of the *Fair Labor Standards Act*, § 215 (a) (3), and a violation of

Idaho Code, § 18-5401, as said Glenn at all times was attempting to jeopardize Gibson's property right of employment, and shield the County from liability for his misconduct.

COUNT XI

CLAIM AGAINST ADA COUNTY FOR REPEATED VIOLATIONS OF GIBSON'S RIGHTS PURSUANT TO *THE FAIR LABOR STANDARDS ACT.* 29 U.S.C., § 201 *ET SEQ.* AS THE COUNTY KNEW THEY WERE IN VIOLATION, AND HAD BEEN IN VIOLATION OF THE ACT SINCE 1994

143. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 142 above, inclusive, as though said allegations were set forth and contained in full herein.

144. That at all times relevant to this claim for wages through her employment for the periods of October 1, 1999, through February 15, 2000, said Gibson was classified as a permanent status employee, with vested rights as accrued under her tenured status, and entitlements and protections afforded under the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C., § 201 *et seq.*, as carried into the provisions and enforced under their County Personnel System, § 1-7C-1 through § 1-7C-10, Ada County Code.

145. That Ada County, its Sheriff's Office and its Payroll Department violated several federal and state statutes during their mistreatment of Gibson; Ada County, its Sheriff's Office and its Payroll Department had prior knowledge of violations (See Ken Woodbridge and Bob Perkins v County of Ada, Case

No. 95957, Fourth District Court, Ada County, Honorable G.D. Carey, presiding), of the *Fair Labor Standards Act* over pay records, pay vouchers and restrictive endorsements; that Ada County specifically violated Title 29 U.S.C., § 211 (c) (record-keeping), and § 215 (3) (retaliatory discharge) due to overpayments caused from their own payroll system errors in the record keeping process.

146. That said Ada County Sheriff, Vaughn Killeen, has historically expressed an arrogant attitude when dealing with employees' concerns over pay issues controlled by FLSA, and was quoted in the Proposed Findings of Fact, Conclusions of Law and Order in the Woodbridge-Perkins Case, No. 95957, *supra*, (P5, L16-17), as stating: "I don't give a shit what the Ada County Ordinance says."

147. That Gibson does allege, as a matter of law, that this ongoing action of County disregard of FLSA mandates on record-keeping and retaliatory discharge were willful violations of the *Fair Labor Standards Act*, § 211 (c) and § 215 (a) (3), and Gibson is entitled to such punitive damages as authorized by the provisions of the *Fair Labor Standards Act*, § 216.

COUNT XII

CLAIMS AGAINST ADA COUNTY FOR THE ATTEMPT TO MALICIOUSLY AND FRAUDULENTLY PROSECUTE GIBSON, TO FRAUDULENTLY OBTAIN ENTRY OF A JUDGMENT AGAINST GIBSON FOR $8,528.89, WHEN ADA COUNTY KNEW THE COUNTY, ITS SHERIFF'S OFFICE, AND ITS COUNTY PAYROLL DEPARTMENT WERE THEN IN VIOLATION OF THE *FAIR LABOR*

Appendix 73

STANDARDS ACT, 29 U.S.C., § 201 _ET SEQ._ (FLSA), AND VIOLATE GIBSON'S RIGHTS BY FORCING HER TO BE ON ADMINISTRATIVE LEAVE WITHOUT PAY, FORCED PAY REDUCTION, AND TERMINATING GIBSON'S EMPLOYMENT IN VIOLATION OF THE PROVISIONS FLSA

148. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 147 above, inclusive, as though said allegations were set forth and contained in full herein.

149. That in addition to said allegations of fact set forth above, concerning attempts at prosecution, leave without pay and forced reduction in pay without authorization, on August 29, 2001, said Ada County, through its agents, sent Gibson a written demand for payment in the amount of $8,528.89, requesting Gibson reimburse Ada County for the erroneous overpayment made to Gibson's compensation, which Ada County had disbursed through their direct deposit program; that Ada County knew Gibson did not owe Ada County, once a full audit was conducted and reveal compensation was actually owed to Gibson.

150. That on November 7, 2001, Ada County did then file its Complaint, therein stating it had a cause of action against Gibson, and alleged Gibson received a "mixed paycheck" and had mistaken receipt of monies not due or owing for a period of eight (8) months, during which time "Defendant did not report the salary overpayment, nor did Defendant take steps to correct the error with Ada County", and that Gibson has "failed to return any of the overpaid amounts", and while stating, on several occasions, "she intends to repay the same."

151. That Gibson does allege, as a matter of law, this Complaint constitutes a violation of the *Fair Labor Standards Act*, § 215 (a) (3), and a violation of Idaho Code, § 18-2403, by wrongfully appropriating the property rights of Gibson and withholding property (wages, benefits, entitlements) from said Gibson, as the owner thereof. That Gibson is entitled to be fully compensated punitive damages for.their willful violations of FLSA and her property rights.

COUNT XIII

GIBSON 'S CLAIM FOR EMPLOYMENT REINSTATEMENT, PROMOTION, AND PAYMENT OF LOST WAGES AND ALL BENEFITS AS A RESULT OF THE COUNTY'S UNLAWFUL CONDUCT AND DISCRIMINATION, PURSUANT TO LAW, AND TITLE 29 U.S.C., § 216 (b)

152. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 151 above, inclusive, as though said allegations were set forth and contained in full herein.

153. That Gibson does allege, as a matter of law, Ada County's termination of Gibson's employment was a violation of due process, abuse of process, and a violation of its Ada County Code, of State statute, of public policy, and a breach of the implied covenant of good faith and fair dealing, and a violation of the *Fair Labor Standards Act*, § 215 (a) (3).

154. That at all times relevant, Gibson had established civil rights and property interests by virtue of her classified, permanent status employment with Ada County, having vested rights accruing to her under such tenured status, and had the

right to entitlements and to protections afforded to her under the *Public Employees Protection Act*, Idaho Code, § 6-2101 *et* seq., and the *Fair Labor Standards Act* (FLSA), Title 29 U.S.C., § 201 *et seq.*, as carried into the provisions and enforced under the Ada County Personnel System, identified in § 1-7C-1 through § 1-7C-10, Ada County Code, and entitled to receive all rights, entitlements and protections, which have been denied her, and entitled to be fully reinstated and compensated for all damages incurred as a result of the wrongful actions of said Ada County.

155. That pursuant to the job descriptions of the Ada County Sheriff's Office Budget Director, Kelli Bolicek, and Payroll Specialists, Marshia Eiguren and Merrily Wilfong, those individuals, acting in behalf of Ada County, are vested with the responsibility to assure Gibson's payroll records (and payroll disbursement) are in compliance with all terms, provisions and conditions of the *Fair Labor Standards Act*, 29 U.S.C., § 201 *et seq.*, and no employer or agent thereof, being said Sheriff Killeen, R. Monte MacConnell, Greg Bower, Arville Glenn, Scott Johnson, or any Ada County Payroll personnel can transfer, or otherwise delegate any provision, term or condition required of the employer to the employee, under any lawful process.

156. That the "pay voucher" or County "claim form", as used by Ada County, prior to January 10, 2002, did violate the provisions of FLSA, and did constitute a violation of Gibson's property rights and employment interests, and said document is neither an official or lawful document for any employment purposes under FLSA.

157. That–it has been confirmed only Gibson was terminated as a result of this administrative payroll error, and

each of the three (3) Ada County employees directly involved in the creation and perpetuation of the administrative overpayment error, and deposit of funds under the County's direct deposit system, have retained their positions and remained employed with Ada County in the same position they had when the administrative error was created, and the overpayment discovered. That none of these employees were interrogated, exposed to undue influence or duress, abuse of process, threatened, harassed, disciplined, separated, threatened to resign, terminated, ordered to attend meetings, placed under surveillance, or threatened criminally, notwithstanding their direct, sole cause and exclusive involvement in the creation and perpetuation of the administrative error.

158. That the retained employment of those above-identified employees, but wrongful termination of Gibson, does demonstrate and constitute an arbitrary and capricious policy of discriminatory conduct, within the administration of the Ada County and the treatment of its classified employees, and does constitute a violation of the *Fair Labor Standards Act*, § 215 (a) (3), and for all reasons alleged above, including this discriminatory action, Gibson is entitled to full reinstatement of her employment.

COUNT XIV

CLAIM FOR DAMAGES AS A RESULT OF DISCRIMINATORY AND UNLAWFUL CONDUCT, LACK OF DUE PROCESS, DENIAL OF DUE PROCESS, AND ABUSE OF PROCESS

159. Gibson does re-allege each of the Allegations set forth and contained in Paragraphs 1 through 158 above,

inclusive, as though said allegations were set forth and contained in full herein.

160. That pursuant to Title 29, U.S.C. § 215 (a) (3), Ada County has discriminated against Gibson throughout their entire engagement, once the overpayment error was discovered by the County, and then pursued a pattern of violating Gibson's rights, which were established July 10, 1997; that said rights are afforded among other sources, under the federal *Fair Labor Standards Act* (FLSA). 29 U.S.C. § 201 *et seq.* The County has violated Ada County Codes, State, and Federal Laws on issues of compensation, and did engage in acts of undue influence and duress, threat and extortive conduct, abuse of process, lack of due process, denial of due process, harassment, discrimination, arbitrary and capricious conduct, and violations of the doctrines of implied covenant of good faith and fair dealing and Idaho public policy, which conduct ultimately culminated in the termination of Gibson's classified permanent employment, and has deprived her entitlements to both wages and benefits due her under her classified employment, with lasting impact to her family and to her and their combined quality of life.

161. That Gibson is entitled to recover liquidated damages as a result of each of the discriminatory acts, each of the acts of willful conduct, and each of the violations of FLSA, the effects of which has resulted in withheld salaries, wages and benefits as identified in Counts I, II, III, IV, V, VIII, AND XIII above, and damages are entitled to be awarded in accordance with the provisions of the *Fair Labor Standards Act*, § 216 (b).

COUNT XV

Appendix 73

CLAIM FOR INJUNCTIVE RELIEF AGAINST ADA COUNTY, ADA COUNTY SHERIFF'S OFFICE AND ADA COUNTY PAYROLL DEPARTMENT

162. That Gibson does re-allege each of the Allegations set forth and contained in Paragraphs I through 161 above, inclusive, as though said allegations were set forth and contained in full herein.

163. That at various occasions, including but not limited to July 20, 1999 and August 2, 1999, said Ada County, and its Departments of Payroll and Ada County Sheriff, through their elected officials or agents, did violate Title 29 U.S.C., § 211 (c), in that they did wrongfully attempt to transfer unto Gibson, through the use of the "pay voucher" and "claim form", the duty and statutory responsibility of the employer to keep and maintain accurate wage and salary records under 29 U.S.C., § 211 (c), and such attempt does constitute a violation of said federal statute, Title 29, U.S.C., § 211 (c), as the employer has the sole burden of keeping such proper records of wages, hours, and other conditions and practices of employment.

164. That any employer who has failed to make and maintain adequate and accurate records (and disbursements) as required by federal law and regulations, cannot thereafter contend any amounts owing to their employees could not have been ascertained with mathematical exactitude, as the ascertainment of payment is the result of the employer's failure to comply with the record-keeping requirements of the *Fair Labor Standards Act*, as a matter of law, as the employer cannot transfer this statutory obligation for accurate record-keeping under 29 U.S.C., § 211 (c), to the employee.

165. That Ada County, beginning January 10, 2002, no longer requires County employees to sign a "pay voucher" or "claim form" before disbursing the wages employees are entitled to receive, as the "pay voucher" or "claim form" as before used is now deemed, in fact, to have violated state law and the requirements of the *Fair Labor Standards Act.*

166. That Gibson does allege, as a matter of law, this former action of requiring from her a signature on the "pay voucher" or "claim form" was a violation of the *Fair Labor Standards Act*, § 215 (2), which makes it "unlawful for any person to violate any of the provisions of §206 or § 207..."

167. That Gibson is entitled to recover regular pay, overtime pay, and liquidated damages as a result of the ongoing discriminatory conduct and willful violations of FLSA during Gibson's employment with Ada County, as identified in Counts I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII AND XIV above, and damages are provided for in accordance with the provisions of the *Fair Labor Standards Act*, § 216 (b).

168. That Gibson should be afforded injunctive relief and protection by this Court, restraining Ada County, Ada County Payroll Department, and the Ada County Sheriff's Office from further violating the *Fair Labor Standards Act*, § 206, § 207, § 207 (k), § 211 (c), § 215, including § 215 (a)(2), § 215 (a)(3), and § 215 (a)(5), pursuant to the *Fair Labor Standards Act*, Title 29 U.S.C., § 217.

169. That Gibson does reserve her right hereafter, as well as in the event the above-entitled action is removed to The United States District Court, Boise, Idaho, to further amend these pleadings (including the caption) to include all real

parties of interest, which may include, but not limited to, the following named potential parties of interest:

1. ADA COUNTY SHERIFF'S OFFICE;

2. VAUGHN KILLEEN, acting individually and in his official capacity under color of State Law as ADA COUNTY SHERIFF;

3. R. MONTE MacCONNELL, acting individually and in his official capacity under color of State Law as LEGAL ADVISOR TO THE ADA COUNTY SHERIFF;

4. ARVILLE GLENN, acting individually and in his official capacity under color of State Law as a law enforcement official for ADA COUNTY UNDER THE SHERIFF;

5. SCOTT JOHNSON, acting individually and in his official capacity under color of State Law as a law enforcement official for ADA COUNTY UNDER THE SHERIFF;

6. GREG BOWER, acting individually and in his official capacity under color of State Law as ADA COUNTY PROSECUTING ATTORNEY;

7. DOES I thru X, acting individually and in an official capacity, under color of State law.

WHEREFORE, Gibson as Defendant and Counterclaimant, does pray for entry of Judgment as follows:

1. That Plaintiff recover nothing whatsoever by their Complaint, and their assertions, allegations and claims be dismissed with prejudice.

2. That an Order be entered, directing Ada County Payroll Department to engage the services of an independent agent to conduct an unbiased audit, retained at the County expense, with judicial authorization to reconcile all salary entitlements concerning Gibson for regular wages, overtime wages, compensation time, sick leave, earned vacation, insurance (medical, life, family), Workman's Compensation and disability benefits, retirement benefits, and all other benefits provided to Ada County employees, through the period of her protected and tenured employment as a classified permanent employee.

3. That Gibson reserves the right to file further amendments to her pleadings as may be needed, to further address and confirm her rights, interests, and protected entitlements, and accrued damages, and right to reinstatement of employment with Ada County to the extent not fully addressed herein.

4. That Gibson recover all wages, compensation, benefits, entitlements, awards and injunctive relief sought, as alleged in COUNTS I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, AND XIV, and be awarded equal amounts as and for liquidated damages and punitive damages, as allowed pursuant to the *Fair Labor Standards Act*, § 216 (b).

5. That Gibson recover all costs and attorney fees incurred in this action pursuant to the *Fair Labor Standards Act*, § 216 (b), and under Idaho Code, § 6-2106 (Idaho Code, § 6-2101 *et seq.*), and by virtue of Rule 54, I.R.C.P.

6. That all records of each interrogation, and all events of the investigation and termination of Gibson be permanently removed from all locations and offices of Ada County government offices currently retaining such information, currently known to include, but not limited to: (1) Defendant's Personnel File, (2) the Ada County Sheriff's Office, (3) the Ada County Payroll Department, (4) the Criminal Division of the Ada County and Canyon County Prosecutor's Office, and (5) the Civil Divisions of the Ada County and Canyon County Prosecutor's Office.

7. That the Ada County Sheriff, Vaughn Killeen, be assessed and fined pursuant to the authority vested by the *Fair Labor Standards Act*, § 216, for repeated and willful violations of § 206, § 207, § 207 (k), §211 (c), § 215 (a)(2), § 215 (a)(3), and § 215 (a)(5) of said *Fair Labor Standards Act*.

8. That this Court, pursuant to Title 29 U.S.C., § 217, issue an injunction against Ada County, Ada County Payroll Department and the Ada County Sheriff's Office to restrain said employer(s) from engaging in further violations of the mandatory requirements of the *Fair Labor Standards Act*.

9. That this Court, pursuant to Title 29 U.S.C., § 217, issue an injunction against Ada County, Ada County Payroll Department and the Ada County Sheriff's Office to restrain said employer(s) from engaging in further abuse, misapplication and violations of the "*7k exemption*" and utilize the computation and payment of overtime wages only as

defined for employees as "law enforcement", and not those non-commissioned employees that have no power to arrest, which includes the "white shirt" in the civil sector of the Jail Facility.

10. That this Court issue a directive to the Secretary, United States Department of Labor, directing the Secretary to initiate an investigation, as provided for in Title 29 U.S.C., § 211 (a), regarding the wages, hours, record-keeping and other conditions and practices of the Ada County Payroll Department and the Sheriff's Office, as it may pertain to the compensation of employees of the Ada County Sheriff's Office, to identify the violations in specific detail, and prevent repeat of these violations in the future.

11. Gibson does allege her damages do exceed the jurisdictional limits of $10,000.00 of the Magistrate Court of this state, and this action is within the jurisdiction of the District Court.

12. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 2nd day of February 2004.

s/ Vernon K. Smith
Vernon K. Smith
Attorney for Defendant/Counterclaimant

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STATE OF IDAHO)
: ss
County of Ada)

Stacy A. Gibson, being first duly sworn upon oath, deposes as follows:

That I have read the above and foregoing Defendant's Second Amended Counterclaim; that I know the contents thereof; and the facts therein stated I believe to be true.

s/ Stacy A. Gibson
Stacy A. Gibson
Defendant/Counterclaimant

SWORN AND SUBSCRIBED to before me this 2nd day of February 2004.

s/ Vernon K. Smith
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 12/20/06

APPENDIX 74 – EXCERPT OF KELLI BOLICEK'S TESTIMONY TAKEN DURING GIBSON'S PERSONNEL HEARING ON JANUARY 26, 2000

Direct Examination Of Kelli Bolicek By Ada County, January 26, 2000, Page 80, Line 16-Page 83, Line 13

MS BRAUNER: Okay. Would you please state your name and spell it for the record.

MS. BOLICEK: Yes. Kelli Bolicek. K-e-l-l-i, last name B-o-l-i-c-e-k.

MS. BRAUNER: And what is your position with Ada County?

Ms. BOLICEK: I'm the budget officer (inaudible) sheriff's office.

MS. BRAUNER: And how long have you been the budget officer for the sheriff's office?

MS. BOLICEK: (Inaudible) and a half years.

MS. BRAUNER: Can you briefly describe basically your duties in that position?

MS. BOLICEK: Yes. I prepare the budgets and oversee the financial office which prepares the payables and receivables that we get (inaudible) in the jail and oversee payroll and some of the timekeeping (inaudible).

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MS. BRAUNER: Okay. How did you first become aware that there was an issue – a potential issue with Deputy Gibson – Stacy Gibson's payroll, her salary?

MS. BOLICEK: You want to know how I became aware of it?

MS. BRAUNER: Yeah.

MS. BOLICEK: Okay. I was working on a problem with a grant. It's a new thing with the system – with the payroll system that we can now put two jobs to a person and so with my grant people now, I have the federal portion of the grant in one job and (inaudible) another job.

So what I had done is the system would say not calculating some of the percentages – I shouldn't say percentages. The labor rate for these grant people for their overtime. And so I had asked payroll downtown to send me a list of all of the people that have two jobs out there and their overtime for the year.

And when I got that list and I have a copy of it, Stacy's name was on that list and I called them immediately that morning which was July 19 (inaudible). And saw that – or asked them why Stacy's name would be on my

(inaudible) list. She's not a grant employee. And their answer was that – I was speaking to (inaudible) and I do not know her name downtown but she was the person I was speaking on the phone. And her answer was, "Well, she is a grant employee," and I said, "No, she is not," and I said, "How could she even be on this list?" And she said that she has two jobs. And I said, "You mean to tell me she's working 40 hours at one job and 40 hours at another?" And she said, "Yeah." And I said, "What are her two job titles?" And she said police records clerk at BSU and jail (inaudible) in the jail.

And I said, "Well, she's not working 80 hours a week," and so I said, "Will you please verify that we are truly paying her for two jobs?" And they did and (inaudible).

MS. BRAUNER: And that was July 19, 1999?

MS. BOLICEK: Yes.

MS. BRAUNER: What action I guess did you – did you take any further action when you realized that?

MS. BOLICEK: Yes. I had payroll downtown make sure to verify what we were paying her and then I told our payroll records and I

could see where there were two jobs for her but we were only getting one check and I believe that that's how our people did not notice it because when we hand out vouchers (inaudible). When we hand those out, it comes as one; not two separate ones. So our person that hands those out would not have known that there were two because there's only one check. There's only one voucher.

MS. BRAUNER: Okay. Have you – have you ever encountered this type of error before?

MS. BOLICEK: No. And even when I found it, I called Cheryl Bower (phonetic) who is the (inaudible) office and asked if this had ever happened before and she said (inaudible).

MS. BRAUNER: Okay.

MS. BRAUNER: Those are all the questions I have for you.

MS. BOLICEK: Okay

Cross-Examination Of Kelli Bolicek By Gibson's Counsel, January 26, 2000, Page 83, Line 16-Page 85, Line 5

MR. SMITH: You have explained to us how it came to be that you (inaudible). Determination how it came to be that it existed --.

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MS. BOLICEK: How this could happen?

MR. SMITH: Yes.

MS. BOLICEK: Yes. But I was – actually Marshia should probably – well, I can tell you if you want or Marshia either one but she explained how it could happen to me.

MR. SMITH: You tell me what you under stood (inaudible).

MS. BOLICEK: Okay. Okay. What I understand happened is back then I'll say September – no, it would be October of '99 I believe, Stacy was transferred from BSU --.

MR. SMITH: '99 OR '98?

MS, BOLICEK: '98. I'm sorry.

MR. SMITH: (Inaudible).

MS. BOLICEK: And she was transferred from BSU (inaudible) to a jail position and what happens is they (inaudible) our people (inaudible put in a personnel (inaudible) form. That was submitted. Well, what happened is when she was transferred at mid month, they said – they send them (inaudible) pay 15 days at this rate of pay, $15 [15 days] at this rate of pay. Well, they keep two jobs out there to

pay at the two different rates of pay. And payroll then puts it in a tickler file to the next month to take off that prior job and that did not happen. (Inaudible).

MR. SMITH: So (inaudible)?

MS. BOLICEK: (Inaudible).

MR. SMITH: Is it a payroll error or a check writing error or a job description error? What have you done to classify it so you can (inaudible)?

MS. BOLICEK: Well, payroll has – I asked them to prepare a report now that tells me every month who has two jobs out there. (Inaudible) so this comes out (inaudible).

MR. SMITH: So is it your belief this happened because (inaudible)?

MS. BOLICEK: Yes.

MR. SMITH: (Inaudible)?

MS. BOLICEK: She had two jobs (inaudible).

MR. SMITH: Is that because a transfer (inaudible)/

MS. BOLICEK: (Inaudible) at the new job pay.

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Redirect Examination Of Kelli Bolicek By Ada County, January 26, 2000, Page 86, Line 22-Page 87, Line 5

MS. BRAUNER: When Mr. Smith asked you if an audit had been done, was an audit done specifically by hours that Stacy Gibson had worked?

MS. BOLICEK: Yeah.

MS. BRAUNER: And moneys that were due to her?

MS. BOLICEK: Yeah.

MS. BRAUNER: Along with your audit of the program and how the error occurred?

MS. BOLICEK: Yes.

Recross-Examination Of Kelli Bolicek By Gibson's Counsel, January 26, 2000, Page 87, Line 9-25

MR. SMITH: Essentially you asked if you audited the Stacy Gibson hours. Is Stacy both a salaried employee and also an hourly employee (inaudible).

MS. BOLICEK: She's salary but (inaudible). So it becomes an hourly employee (inaudible).

MR. SMITH: So does that mean she does two different (inaudible)?

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MS. BOLICEK: No. We pay – everyone gets their regularly monthly salary and then overtime that is turned in is calculated and sent in in a (inaudible) hourly. But the system automatically phases (inaudible) unless someone would terminate (inaudible) month or something, (inaudible).

MR. SMITH: And would the fact that she is both salaried (inaudible) and then get an hourly employee, (inaudible), is that (inaudible).

MS. BOLICEK: No.

APPENDIX 75 – EXCERPT OF MARSHIA EIGUREN'S TESTIMONY TAKEN DURING GIBSON'S PERSONNEL HEARING ON JANUARY 26, 2000

Direct Examination Of Marshia Eiguren By Ada County, January 26, 2000, Page 88, Line 15-Page 91, Line 13

MS. BRAUNER: Okay. Could you please state your name for the record and spell your last name.

MS. EIGUREN: Marshia Eiguren, E-i-g-u-r-e-n.

MS. BRAUNER: What is you position with Ada County?

MS. EIGUREN: Payroll specialist.

MS. BRAUNER: How long have you been in that position?

MS. EIGUREN: About (inaudible).

MS. BRAUNER: And can you please give us a brief description of the kinds of work that you do, your duties in that position?

MS. EIGUREN: Well (inaudible).

MS. BRAUNER: Okay. Thank you. How did you – how and when did you first become aware of a potential problem with over payment of Deputy Stacy Gibson's salary?

MS. EIGUREN: I believe it was in June (inaudible).

MS. BRAUNER: And how did you become aware of it? Did you get a phone call or did someone talk to you about it?

MS. EIGUREN: There were several employees out there that had like two jobs. And the program wasn't calculating that overtime (inaudible). She came (inaudible) once a week (inaudible).

MS. BRAUNER: Once a week or once a month?

MS. EIGUREN: Yeah, once a month. Once a month (inaudible). And (inaudible) so when we went to check on it, Ms. Gibson's name came up on the list. (Inaudible) yeah, I think she (inaudible) information we had given and the she called me (inaudible).

MS. BRAUNER: Do you have – I guess you know exactly how the over payments occurred?

MS. EIGUREN: (Inaudible).

MS. BRAUNER: How did they occur?

HEARING OFFICER: Just for the record, she needs to repeat audibly – audibly yes or no, whatever it is, without shaking her head.

MS. EIGUREN: Okay.

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MS. BRAUNER: Can you explain how that occurred?

MS. EIGUREN: In October of each year the employees get a raise and in this situation, there was the one job as a records clerk. And then in the middle of the month, she started a new job as a jail (inaudible). And they split the two salaries for that month of October. And then in November the one job was supposed to be an (inaudible) of this job. And we failed to do that.

MS. BRAUNER: When you say we failed, who --.

MS. EIGUREN: Marilee (phonetic) and I, (inaudible). October 3, we do (inaudible). A lot of stuff I don't get (inaudible). So I missed (inaudible).

MS. BRAUNER: Okay. How would you – how would you characterize what happened either by yourself or Marilee? Would there I guess – was there any kind of intent? Was it intentional it wasn't kicking out a second job?

MS. EIGUREN: Oh, no. There's no reason for us to give or take away salaries.

MS. BRAUNER: It's simply an error?

MS. EIGUREN: It was just an error. Overlooked it.

MS. BRAUNER: To your knowledge, has this type error ever occurred before?

MS. EIGUREN: No.

MS. BRAUNER: In the nine years that you've been there, your are haven't experienced --.

MS. EIGUREN: I haven't. I don't recall. If it has, it hasn't been caught.

MS. BRAUNER: Once you became aware of the problem, what did you or your office do to correct it?

MS. EIGUREN: Well, immediately we had to go back what paid and what should have been paid to everybody, federal, state (inaudible). And I believe it was an administrative leave for a while, July (inaudible).

MS. BRAUNER: Okay. And at some point, did you go in and remove the second job?

MS. EIGUREN: Oh, yes (inaudible).

MS. BRAUNER: Okay.

MS. BRAUNER: I'm finished.

Appendix 75

Cross-Examination Of Marshia Eiguren
By Gibson's Counsel, January 26, 2000,
Page 91, Line 16-Page 92, Line 14

MR. SMITH: (Inaudible). Shows in October then (inaudible)?

MS. EIGUREN: Yes. (Inaudible) a second job, (inaudible).

MR. SMITH: You split the salary, does that mean that you gave 50 percent --.

MS. EIGUREN: We were told to pay (inaudible) hours on the job and (inaudible) hours on the second job.

MR. SMITH: (Inaudible) hours?

MS. EIGUREN: Uh-huh.

MR. SMITH: And who told you that?

MS. EIGUREN: (Inaudible).

MR. SMITH: So the (inaudible) in the sheriff's office told you to pay her 88 hours on each job?

MS. EIGUREN: Yes.

MR. SMITH: And so it was from the instruction of the sheriff's office that it continued that way?

MS. EIGUREN: (Inaudible), just for that month, October.

MR. SMITH: Just for that month. The following month of October, did you get any instruction from the sheriff's office?

MS. EIGUREN: No. On that one, (inaudible).

MR. SMITH: (Inaudible) on that status form, that told you what to pay for the month of October, was the accounting (inaudible) on the status form?

MS. EIGUREN: No.

APPENDIX 76 – ADA COUNTY SHERIFF'S OFFICE POLICY MANUAL, § 7.05 (2) (MEMBERS' RIGHTS), EFFECTIVE OCTOBER 1, 1998 AND APPROVED BY ADA COUNTY SHERIFF, VAUGHN KILLEEN

SECTION 7.05 MEMBERS' RIGHTS

(2) The interview shall be conducted at a reasonable hour, preferably when the member is working unless the seriousness of the investigation requires otherwise. If the interview is conducted while the member is off duty, compensation shall be granted in accordance with regular department procedures.

APPENDIX 77 – ADA COUNTY SHERIFF'S OFFICE POLICY MANUAL, § 7.05 (4) (MEMBERS' RIGHTS), EFFECTIVE OCTOBER 1, 1998 AND APPROVED BY ADA COUNTY SHERIFF, VAUGHN KILLEEN

SECTION 7.05 MEMBERS' RIGHTS

(4) The member under investigation shall not be subjected to offensive language or threatened with punitive action except that a member refusing to respond to questions or submit to an interview must be informed that failure to do so may result in the termination of the interview process and institution of disciplinary penalties.

APPENDIX 78 – ADA COUNTY SHERIFF'S OFFICE POLICY MANUAL, § 7.05 (7) (MEMBERS' RIGHTS), EFFECTIVE OCTOBER 1, 1998 AND APPROVED BY ADA COUNTY SHERIFF, VAUGHN KILLEEN

SECTION 7.05 MEMBERS' RIGHTS

(7) No member will be subjected to punitive action because of the exercise of privileges granted under this order or the exercise of any right under the U.S. Constitution, Idaho Constitution, or applicable law.

APPENDIX 79 – ADA COUNTY AUTOMATIC PAYCHECK DEPOSIT AUTHORIZATION, DATED AUGUST 6, 1998 AND SIGNED BY GIBSON

Employee Name	**Employee Number**	**Department**
Stacy A. Gibson	~~*2885*~~ *54224*	*Patrol*

Account Located At (Depository)	**Branch**
Washington Mutual Bank	*Five Mile Center* *10751 W. Overland Rd.* *Boise, ID 83709*

Depository's Transit Routing Number	**Checking Account Number (attach a void check)**
123271978	*406-306452-4*

I hereby authorize Ada County to initiate credit entries and to initiate, if necessary, debit entries and adjustments for any credit entries in error to my account indicated above. I also authorize the above named depository to credit and/or debit the same to my account.

I understand that I will receive an earnings slip showing gross pay and itemized deductions each pay period.

Employee Signature	Date Signed
s/ Stacy A. Gibson	*8-6-98*

Copy Of Void Check Attached